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LEGAL SERVICES CORPORATION REAUTHORIZATION

HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

MARCH 13, 1991

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LEGAL SERVICES CORPORATION REAUTHORIZATION

WEDNESDAY, MARCH 13, 1991

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2226, Rayburn House Office Building, Hon. Barney Frank (chairman of the subcommittee) presiding.

Present: Representatives Barney Frank, John F. Reed, George W. Gekas, and Jim Ramstad.

Also present: Paul Drolet, chief counsel; Cynthia Blackston, chief clerk; and Raymond V. Smietanka, minority counsel.

Mr. FRANK. The hearing of the Subcommittee on Administrative Law and Governmental Relations will come to order.

We are here today to hear testimony on the reauthorization of the Legal Services Corporation, which has for too long not been reauthorized and we hope to move on it this year.

I have no opening statement.

Mr. Gekas.

Mr. GEKAS. Thank you, Mr. Chairman.

The only assertion I want to make is that the hearings that we are about to undertake will confirm, we think, two well-known theses in our Nation, and that is—one of them is that the American public has accepted and promoted and supports the concept of and the reality of Legal Services nationwide; and second, they are still suspicious in great quarters about the total mandate for Legal Services and about some of the advocacies or lack of advocacies they perceive.

I think those two themes will be well explored as we proceed during the hearings and during the subcommittee's deliberations and I, too, believe that what the chairman in his opening statement predicts will occur, the reauthorization.

I have no further comments and thank the Chair.

Mr. FRANK. I thank the gentleman.

Let me say, I would subscribe to his view that whereas in the past, this was sort of a free-swinging battle in many ways, I think the differences have been narrowed. There is agreement that there should be a Legal Services Corporation; there is agreement that it should be well-run and there have been from time to time problems that needed addressing and I think we all recognize that we

have a serious legislative job and it is one that is going to be focused on what they should and shouldn't be doing.

Mr. Reed.

Mr. REED. Thank you, Mr. Chairman. As a practicing attorney, I know how important it is to have access to a legal system and the Legal Services Corporation has done that for many, many years. For over 20 years in Rhode Island, this program has played a very positive and important role in our State and I think that we need to continue to refine and reinforce the role of Legal Services in the United States and I am very happy to be here to participate with you in this hearing.

Thank you, Mr. Chairman.

Mr. FRANK. Thank you.

We will begin with our witnesses. I have some statements which we will put in now, if there is no objection from my colleagues, from our colleague, Beverly Byron, from our colleague, Charles Stenholm, from Basile Uddo, who is a member of the Board of Directors and a statement from Congressman Ford, our colleague who chairs the Education and Labor Committee, which has substantive jurisdiction over the law involving migrant farm workers, which is one of the areas where there has been some controversy.

So, have you got Mr. Ford's statement? I was just going to read some excerpts from Mr. Ford's statement at his request. These are comments that were prepared, I believe, by the chairman's staff.

Mr. Ford's testimony reflects his concern about the effects that proposed migrant Legal Services "reform" amendments sponsored last year by our colleagues Mr. McCollum and Mr. Stenholm and Mr. Staggers would have on Migrant and Seasonal Agricultural Worker Protection Act, which is within the jurisdiction of his committee.

The chairman views these amendments as a backdoor attempt to amend the AWPA, although it falls under the Education and Labor Committee's jurisdiction. The Agricultural Worker Protection Act, private right of action is the most important deterrent against abuse. The reform amendments would diminish this congressionally created right.

The testimony further points out that the hearings on the Agricultural Worker Protection Act that Education and Labor had in 1987 in Biglerville and the recently released GAO report revealed that no evidence that migrant Legal Services attorneys failed to meet the standards of conduct for their profession or that they are harassing people by filing frivolous suits. That is, it is the opinion of Chairman Ford, based on a hearing and based on a GAO report that the AWPA is working well and that the Legal Services' role has been, on the whole, to help it work well.

Obviously, we may hear other views, but I did, because of the importance of his chairmanship on that other committee, want to put that in the record.

[The prepared statement of Mr. Ford follows:]

PREPARED STATEMENT OF HON. WILLIAM D. FORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify about the importance of the Legal Services Corporation's Migrant Legal Action Programs.

Last September I wrote a "Dear Colleague" letter expressing my deep concern about a package of legal services "reform" amendments sponsored by Representatives Bill McCollum, Harley Staggers, and Charlie Stenholm. As the new Chairman of the House Committee on Education and Labor, I would like to reiterate my concern about the effects of these proposed "reform" amendments on legislation within my Committee's jurisdiction – specifically the Migrant and Seasonal Agricultural Worker Protection Act (AWPA).

I have worked to ensure decent working conditions for agricultural workers, particularly migrants, for over twenty years. In the mid-seventies, when I was the Chairman of the House Agricultural Labor Subcommittee, I witnessed firsthand the grossly substandard housing, transportation, pay and working conditions of migrant farmworkers in this country. In 1973, I introduced amendments to the Farm Labor Contractor Registration Act (FLCRA) that were enacted in 1975, and I was an active participant in the negotiations that produced the AWPA in 1982. I am acutely aware of the historical pattern of abuse and exploitation that migrant workers have to endure, and are enduring even today, and I am committed to preserving their legal rights.

The proposed "reform" amendments relating to the Legal Services Corporation undermine the legal protections created and agreed to in the AWPA. These so called "reforms" would subject injured workers to a number of procedural requirements that

are not applicable to any other potential class of litigants. The amendments include a provision that would force farmworker plaintiffs to meet a pre-litigation requirement to exhaust administrative remedies, even though Section 504(a) of the AWPA specifically allows farmworkers to file suit without regard to exhaustion of any alternative administrative remedies. The short term nature of migrant farm work, in combination with the proposed requirement that injured farmworkers exhaust administrative remedies before filing a suit, would diminish the ability of many farmworkers to exercise the private right of action that Congress made available to them through the AWPA.

I consider the private right of action provided to farmworkers in AWPA to be the most important deterrent against the continued abuse of migrant and seasonal farmworkers. The Department of Labor's enforcement budget was inadequate in 1982 and is even less adequate today. The right not to be subjected to illegal deductions from pay, unsanitary housing, and fraudulent recruiting will be meaningless without strong enforcement. Congress recognized that the Department of Labor would never have sufficient resources to do the job and that a private right of action was essential to the protections we were legislating. These proposed legal services "reform" amendments are a back-door attempt by agribusiness to take the teeth out of the Act.

Agribusiness, and some of our Colleagues, also insist that attorneys from legal services fail to meet standards of conduct for the legal profession, but only when they represent farmworkers. It is time to put this accusation to rest. The General Accounting Office, in a report requested by many of these same Members, found no evidence to substantiate allegations of abusive litigation practices by Migrant Legal Services' attorneys. Moreover, the American Farm Bureau Federation, a major supporter of these

allegations, admitted in an August 7, 1990 memorandum that they "...cannot demonstrate a widespread pattern of abuse in a systematic fashion." In other words, these allegations are not true.

They also allege that Migrant Legal Services attorneys are harassing growers by filing frivolous suits. This too, is not true. The courts have found that agribusiness defendants violated migrant rights protected by federal statute in 28 of the 29 AWPA cases litigated to date by legal services programs. Furthermore, results from a search by the Congressional Research Service of all reported federal court cases filed under AWPA found that in no case were attorney's fees awarded against a farmworker attorney because he acted "in bad faith, vexatiously, wantonly, or for oppressive reasons." With 90% of all migrant farmworker cases being successfully litigated, Migrant Legal Services is under attack because they are effectively doing exactly what AWPA intended them to do – ensure that the rights of these workers are enforced.

In 1987, the Education and Labor Committee conducted hearings on the AWPA in Biglerville, Pennsylvania. Many of the same issues about the activities of Migrant Legal Services' attorneys were addressed then as well. It is four years later and agribusiness still lacks the evidence that Migrant Legal Services' attorneys are filing frivolous suites or acting contrary to the standards of the legal profession.

I urge you to reject any so called "reforms" which attempt to roll back the Congressionally created rights of migrant farmworkers. The impact of restricting farmworker access to legal representation would be devastating on this already poor, and often abused class of workers. Thank you.

[The prepared statement of Mrs. Byron follows:]

SUBMITTED TESTIMONY OF

CONGRESSWOMAN BEVERLY BYRON

ON

LEGAL SERVICES CORPORATION REAUTHORIZATION

FOR THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

MARCH 13, 1991

Mr. Chairman and Members of the Subcommittee:

Let me begin by thanking you for the opportunity to submit for the record my thoughts on the Legal Services Corporation. Unfortunately, my schedule precludes me from testifying in person. In any case, I commend you, Mr. Chairman, for following through on your promise to hold these hearings early in the legislative year, and, I would also like to express my strongest support for moving forward expeditiously with a reauthorization.

As you know, from my previous appearance before the Subcommittee, I do have objections with some of the activities of the LSC grantees. However, before I address those concerns, I would like to reiterate my support for the continuation of the Legal Services Corporation. I believe that the majority of the Legal Service attorneys provide needed services to the poor, who would otherwise fall through the cracks of our American judicial system. Legal counsel should not be contingent on who can pay for it. Mr. Chairman, it is time that we put an end to this atmosphere of confrontation and develop legislation that places this program back on track.

Notwithstanding the above, I believe that reform is necessary in two specific areas: accountability and detail reporting. Last fall, results from a GAO study, which I had requested along with my colleagues from West Virginia, Pennsylvania and Texas, among others, illustrated, in my opinion, a lack of essential detailed reporting on the part of many LSC grantees. Accordingly, many of our questions could not be completely answered by the GAO. As far as accountability is concerned, I believe more oversight is necessary so as to prevent the focus of LSC grantees from drifting towards "political advantageous" cases (or self-promotion, if you will) instead of working for the common good of those individuals in need of legal assistance. By strengthening the accountability of LSC grantees, and at the same time, having a new Board of Directors confirmed, I believe that a reauthorization of the Legal Services Corporation can become a reality.

Furthermore, Mr. Chairman, since there appears to be an improved attitude this year for a reauthorization and the eventual appropriation of LSC, a "move the show on the road" consensus, I feel we can avoid the unfortunate confrontation we experienced last year when there was an attempt to reauthorize the LSC through the appropriation process.

As you are aware, Mr. Chairman, our colleague from Florida has introduced legislation that deliberately focuses reform on the issues I have mentioned, and, it does so with the ultimate goal of returning integrity back to the Legal Services Corporation. I urge the Subcommittee to give this bill immediate and serious consideration.

In closing, I would like to say that I was once involved with a legal services case in Western Maryland in which I saw a once prosperous fruit growers association turn financially crippled, never to recover, due to some over zealous LSC grantees. I hope that my testimony today is given serious consideration as the Subcommittee delibrates and hopefully produces a reformed Legal Service Corporation reauthorization bill that the rest of colleagues can support.

Once again, I thank you for your interest in this important issue.

[The prepared statement of Mr. Stenholm follows:]

Testimony of
Congressman Charles Stenholm
on
REAUTHORIZATION of the LEGAL SERVICES ACT

Before the
Subcommittee on Administrative Law & Governmental Relations
March 13, 1991

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to exchange some ideas on possible reforms to be included in your reauthorization of the Legal Services Act. I commend you, Mr. Chairman, for your following through with your stated commitment to bring a bill to the floor in the 102nd Congress. As always, I appreciate the Chairman's forthrightness and your willingness to hear differing points-of-view.

As you know, I am here to speak in behalf of reforms to Legal Services which were offered and considered by members of this Subcommittee last summer. These reforms are very similar to amendments Bill McCollum and I have offered through the appropriation process and introduced as free-standing bills. As I will mention later on, we believe we have again shown flexibility in responding to concerns raised to us while continuing to support the basic principles which we believe will make the Legal Services program stronger and more accountable.

LEGAL SERVICES REFORM, NOT REPEAL

I apologize for sounding like a broken record but before I say anything else, I want to reiterate something which I repeatedly have tried to make perfectly clear. I believe in Legal Services. As I mentioned last year before this Subcommittee, I don't know what else I can do but sit here and look each of you in the eye, Member to Member, and say that I believe in Legal Services. I hope that my credibility

is such that you feel comfortable in believing thoee worde.

I believe that the majority of Legal Services attorneys are providing the eervices that Congress intended back in the early '70s. I believe that legal repreeentation for the poor ie vital in our American eyetem and I feel that much good ie being accomplished today by many LSC attorneys.

That'e why I do not now eupport abolishing the LSC. It is my impression that the inappropriate activitiee of a fraction of LSC atorneys are, in effect, stealing money for the pureuit of a political agenda, rather than meeting the genuine day-to-day legal neede of poor folke.

REFORM PROVISIONS IN AGREEMENT

I am pleased that the Chairman incorporated some of our provisione into laet year's mark-up of the reauthorization bill this Subcommittee reported. For example, the waste, fraud and abuse provieion was among thoee included. Of course, I would like to see more of our reforms incorporated into thie Subcommittee'e bill. That ie the reason I am here today ie to encourage thie body to take another look at our reform proposal. I believe there are more areae in which we can agree.

Provieione like timekeeping seem so common-eense to me that it's hard for me to understand why they're considered controvereial. Every other attorney in the Country muet keep time recorde if they expect to get paid so I can't figure the problem with requiring it. The fact that a legal service attorney in my District, during regular working houre, staffed a campaign office eeeme eo blatantly wrong that I can't see why a prohibition on political and redietricting activity ie

queetionsd. I believs that thsse few reforms would bring a much nesded basic accountability that the American taxpayer deservee from any governmental entity. Thie accountability will augment, not detract from the vital legal servicss provided by this program.

1991 REFORMS

In keeping with the Chairman's good faith efforte to incorporate eome of our reform proposal from last year, Bill and I have also taken some of your rscommendations and rsworksd several provisions from last year's bill. In fact, ws incorporated into our new bill, HR 1345, a provision from last year's Subcommittee bill on drug related evictione from public housing. We've also made other changes dus to the feedback of others, moet notably the American Bar Association.

One of the more controversial and complicated provisions from laet year's bill -- that being the role soms legal esrvices attornsys are taking againet agriculture producere -- hae been substantially revieed. In fact, it is this ieeue which more than any other got me involved in Legal Services reform. We have removed ths so-called "administrative hoops" a Legal Services attorney would havs had to "jump through" before bringing suit on behalf of a plainiff. Additionally, we have expanded the application of thsse procedural eafeguarde to all defendante of a Legal Servicss suit, and not only agriculture rslated litigation.

It is my hope that thie, and the othsr changes from last year'e bill proves our sarnest and sincere desirs to work with this Subcommittee. Moreover, I hops that thie serves to assurs our opponente that in no way do I want to ses ths law biaeed against farm worksrs. I suspect that abusee by a small number of producsrs do occur and I want thoss rslatsd farm worksrs to have access to legal

sarvice attorneys. But likawise, I don't want to see lagal sarvicas biased against producare, and from the accounts I've heard, I believe we have a problem which naads to be corrected. I am confidant that this provision doea just that by not requiring a prospective plaintiff any additional hurdles before starting litigation and by allowing tha defendant hia right to know by whom and why ha ie being sued.

Additionally, wa have removed tha eection from our bill dealing with attornay accountability, ae well as significantly amending the saction on attorney'e fees. Finally, Bill and I have ravised the provision of our bill dealing with the authority of local governing boarda. Tha new language doean't raquira legal servics attorneys to seak approval from tha board or tha exacutive director before taking any case. It only provides that tha legal service attorneya take cases which fall within tha priorities sat by the local board, except in emergency situations.

GAO AND ATTORNEY CLIENT PRIVILEGE

Bill and I have added a new provision to our bill which waa brought to our attention by a racent GAO raport of several legal service programs. That new provieion ie simply a definition of attorney client privilega. I know that soma my eay that the GAO report could not find any avidance of wrong doing by the legal aarvicea programs etudied. But that is not what tha report aaid. The GAO said, "we ware unable to gather sufficiant avidence to conclude whether grantaa attorneys used improper methods in rapresenting migrant farmworkere."

In defenee of the GAO, thay were unable to gather information because of the ekillful way in which legal servicee attorneye uaed tha

clain of attorney client privilege. Therefore, we have taken a widely accepted definition of attorney client privilege to amend the Legal Services Act. This clear definitin will both protect the rights of legal service clients, and will aid GAO and other auditors in studying the activities of legal service grantees.

We feel that as you are considering this reauthorization bill, it would be helpful to focus on two goals for Legal Services: improved accountabilty and greater local direction. My sincere belief is that by enacting these reforms and causing Legal Services attorneys to act more like other attorneys, the image of the Legal Service lawyer will actually be enhanced, along with the program being improved.

Speaking more specifically, we would like to suggest that these two goals would be supported by enacting the following reforms:

1)a prohibition of redistricting activities by Legal Service attorneys;

2)application of existing federal waste, fraud and abuse provisions to Legal Services programs;

3)reforms of acceptable activities by LSC attorneys;

4)timekeeping requirements;

5)implementation of competition;

6)regulation of private funds; and

7)prohibitions of certain eviction proceeding of convicted drug dealers from public housing.

AUTHORIZATION RATHER THAN APPROPRIATION

Finally, I want to give you every reassurance that I am eager to work through the committee authorization process rather than the appropriations process for trying to enact these reforms. I have always made it clear that I am uncomfortable with authorization-type

language on an appropriations bill and that is not my preferred way of doing business.

I am delighted that you, Mr. Chairman, scheduled these authorization hearings and that you have taken time to hear from us today. My fond hope is that the reauthorization process will be completed this year and we will be voting on Legal Services on the Floor later this year. I look forward to working with this committee in any way I can to be helpful to the process.

# # # #

[The prepared statement of Mr. Uddo follows:]

PREPARED STATEMENT

OF

PROFESSOR BASILE J. UDDO
CHAIRMAN, REAUTHORIZATION COMMITTEE
THE LEGAL SERVICES CORPORATION

Mr. Chairman, and members of the House Judiciary Subcommittee on Administrative Law and Governmental Relations, I appreciate this opportunity to submit my statement for the record and only regret that I am unable to attend the hearing in person.

As a member of the Legal Services Corporation Board of Directors and Chairman of its Reauthorization Committee, I have a special concern for the reauthorization process which is now beginning in this subcommittee.

The current Legal Services Corporation Board represents a diversity of opinion with respect to the many issues confronting the legal services program. Since our nominations earlier this year, the board has not taken any positions with respect to reauthorization legislation. But it is fair to say that the current LSC Board is of one mind with respect to the continuation of the legal services program and support for increased appropriations to help meet the legal needs of the poor. The LSC Board's advocacy, both last year and this year, of additional federal funding is perhaps the best indication of that support.

While the current board has not taken any positions regarding reauthorization, there is a high level of interest among Directors regarding the substantive issues involved. In part, this is because of a recognition that the decline in federal funding of the legal services program over the last ten years is partially attributable to concerns of those in Congress regarding some of the issues under consideration during reauthorization. A Congressional consensus as to the role of the legal services program could pave the way to increased appropriations for the program.

Reflective of the LSC Board's interest in reauthorization has been the appointment of a Reauthorization Committee. This committee will hold hearings to solicit opinions from a wide variety of individuals and organizations regarding reauthorization. Following these hearings, the Reauthorization Committee will report to the LSC Board which would then enter into deliberations as to what positions, if any, the LSC Board should take regarding reauthorization.

Because all members of the LSC Board share a commitment to the objective of providing high quality legal services to the poor, an important aspect of the Reauthorization Committee's work will be the exploration of areas of possible consensus among the many competing policies.

While I have no illusions as to the difficulties involved in achieving a consensus on many legal services issues, I sincerely believe that the reauthorization process provides an historic opportunity to resolve some of the controversies which have hindered the development of the legal services program in recent years.

Mr. FRANK. We will now proceed, and our first witness who is here is Mr. David Martin, who is the new President of the Legal Services Corporation. Mr. Martin, please come forward, accompanied by whomever you wish to have accompany you.

All witnesses are reminded in advance that the Chair is an impatient person.

[Laughter.]

STATEMENT OF DAVID H. MARTIN, PRESIDENT, LEGAL SERVICES CORPORATION

Mr. MARTIN. Thank you, Mr. Chairman. I have appeared before you before and I understand and appreciate your position.

I have submitted a prepared statement for the record.

Mr. FRANK. Without objection, we will make it part of the record.

Mr. MARTIN [continuing]. As you have indicated, so has Mr. Basile Uddo, who is chairman of the Committee on Reauthorization of the Legal Services Corporation Board of Directors. I appreciate your including that for the record.

Mr. Chairman, I just want to comment on a few things that are in my prepared statement, and then make some general observations. Then I would be glad to take questions from the subcommittee members.

First of all, I am pleased to be here and glad you are holding these hearings. It is time for the Legal Services Corporation to be reauthorized. My Board of Directors thinks that is true, and so do I.

The debate on the existence of the Legal Services Corporation and its mission in fulfilling the American ideal of equal access to justice is over. There is a consensus regarding the need for the Legal Services Corporation, that it should be funded, and that it should go forward to accomplish its mission.

As a part of that, the reauthorization process follows naturally. It confirms in law and improves the operation and credibility of the Corporation. It will allow us to focus our energies on its mission. Again, I say thank you for holding these hearings and for the good-faith effort that will be made to reauthorize the Corporation.

Let me comment briefly on the role of the Corporation as I see it, both at the Corporation headquartered here in Washington, and in the field programs. I believe the Corporation's role is to be a good steward of the Federal dollars.

It is my job, and the Corporation's job as a manager, to monitor, to ensure to Congress that the delivery of legal services is in accordance with the Legal Services Corporation Act. Part of that process is the monitoring of programs and taking a close look at how effectively we spend the Federal dollars.

A corollary to that, and a second role of the Corporation, is to help the field programs—reaching out to them and listening to their points of view. I have been trying to do that. I have been trying to reestablish a communication, a direct and honest dialog, to establish trust—which I think has been lacking between the Corporation and the field programs, and perhaps the Corporation and Congress as well.

I want to do that so that when we implement assistance programs I have in mind at the Corporation, they are understood as efforts to enhance the role and the mission of the field programs and the Corporation—not as threats to the field programs, as they have been viewed in the past. I think that establishing trust and dialog will go a long way toward making sure that our motives and our intentions are clear and understood, and that the field programs understand we are in the business of helping them, not threatening them.

How have I been reaching out and doing these things? Well, I have—in the 5½ months I have been there—been on a pretty heavy travel schedule. I have been to West Virginia and visited those who work in the legal services programs. I have been to Minnesota, Colorado, New York, and had the New York chairman and the Executive Director of the Legal Services of New York down to visit me. I addressed the entire legal services contingent in my own State of Virginia. I attended the NLADA Conference in Pittsburgh last fall and met with Bar leaders.

Mr. FRANK. Mr. Martin, we will stipulate to your travels.

Mr. MARTIN. Pardon me?

Mr. FRANK. We will stipulate to your travels.

Mr. MARTIN. OK.

Mr. FRANK. Let's get on with this.

Mr. MARTIN. I just want to let you know that I am trying to establish a dialog, and I think I have succeeded in doing so.

I am also establishing an annual report, a newsletter, and doing other things that will assist the programs.

Mr. Chairman, as a final remark, I recognize there will be controversy and there will be debate over the issues. Out of this debate, I believe there will arise a dialog and a compromise on the issues that will be positive. Although I don't want to speak for the LSC Board of Directors, except in a limited capacity—they recognize that we have a role in shaping that dialog and assisting it.

We stand prepared to assist you and work with you in going forward with reauthorization, Mr. Chairman.

Mr. FRANK. Thank you, Mr. Martin.

[The prepared statement of Mr. Martin follows:]

PREPARED STATEMENT OF DAVID H. MARTIN, PRESIDENT, LEGAL SERVICES CORPORATION

Mr. Chairman, members of the subcommittee, thank you for this opportunity to appear before you.

It is time for the Legal Services Corporation to be reauthorized. The Corporation's authorization expired a decade ago. For the last ten years, the Corporation has been governed by rider, by regulation, and by the not infrequent lawsuit. I have been in office for less than half a year, but I know that the hectic last days of every legislative session for many years has been complicated by a last minute debate over the shape and purpose of the federal legal services program. It is time to once again give the Legal Services Corporation a solid grounding in law.

I believe that, in spite of hard fought, good faith disputes, we are drawing close to a consensus. There is no longer a debate over whether the federal legal services program should exist. There is general agreement that equal access to justice is best served when the poor, as well as the well-to-do, have legal representation. There is a new board of directors, now awaiting confirmation, that is strongly committed to this goal. I am too.

The federal legal services program recently celebrated over twenty-five years of service in making equal access to justice more than an empty promise. Based on my personal visits to field programs, I believe that we can better deliver on that promise by giving the Corporation stronger tools to manage the resources we have. In my own view,

integrity and accountability will yield greater credibility; and increased credibility will in the long run mean we can better promote and carry out the mission of the Legal Services Act.

For instance, I have found that many of our larger, and better managed legal services programs already use timekeeping as an essential method of managing their resources. Last year, appropriation language also authorized the Corporation to study methods of competing grants.

I am not suggesting that these or other proposals are without controversy. Controversy is, in part, evidence of the success and dynamism of the program. But I believe that allegations of misuse or abuse of funds -- allegations that Congress hears about every year -- can be investigated and either dismissed or corrected if there is greater accountability of our grantees and improved oversight of program activities. Congress authorizes over $300 million dollars of taxpayers' money each year for legal services for the poor; we have an obligation to make sure that money is used for the purpose intended, and that it is used efficiently.

Past debates over issues concerning the legal services program have been fraught with misrepresentations and acrimony on all sides. We now have an opportunity to move beyond that, and to find common ground.

It has been said that the Legal Services Corporation is torn between unloving critics and those who are uncritically loving. I hope this subcommittee takes a critical, but loving, look at the Legal Services Corporation and passes a reauthorization bill that will permit the Corporation to focus all its energies on our fundamental mission -- expanding access to justice.

Thank you.

Mr. FRANK. Let me just ask you a couple of questions which you may not be able to answer, but the fact that you may not will be illustrative if you can't, which I will regret, and that has to do with a continuing quest on the part of the Congress to get the administration's position on the whole Legal Services Corporation.

You were appointed, actually, by the Board?

Mr. MARTIN. I was elected by the Board of Directors, that is correct.

Mr. FRANK. Have you had dealings with officials of the administration other than the Board appointees?

Mr. MARTIN. Have I had dealings with officials of the administration?

Mr. FRANK. To the point where you could tell me what the administration's views might be on some of these issues?

Mr. MARTIN. I have talked to individuals in the White House Counsel's Office. They are very interested in assisting and shaping the process. If you are asking me—anticipating the question—what their position is, I have no idea.

Mr. FRANK. You couldn't tell me what they think the authorization level ought to be or what their position would be on some on the amendments that have been pending.

Mr. MARTIN. No, I could not.

Mr. FRANK. All right. That has been consistent with our view, I should make the point, in hearings, I can tell the administration has chosen not to take a position on the various changes that have been proposed and we always remain open to any information to the contrary, but I did think it was important to say there is no showing—we have invited from time to time representatives of the administration to testify. We are always told that no one will come for one reason or another. It is not anybody's jurisdiction and that is a reasonable position, but I just want to make it clear so that when we get into these amendments, at least up to now, we haven't had an administration position one way or the other.

Mr. MARTIN. May I comment, Mr. Chairman? I have reason to believe that the administration is interested in the reauthorization, and in some of the amendments. I think that they may well be willing to reach a position, and I will be in contact with them.

Mr. FRANK. I appreciate that. It is obviously—they are at the halfway point in the administration and we have already twice—since the President took office, we have had consideration on the floor of issues of this sort. Once we actually took it to a vote and another time, it was withdrawn, but there was a great deal of discussion about it, so at some point, they ought to be making their opinion clear.

I do think that everybody who has been involved in this process—I want to make this clear—has been on sufficient notice so that I will not be persuaded by any argument that we have to hold back in terms of time. We have been dealing with some of the issues raised by our colleagues, Mr. McCollum and Mr. Stenholm and Mr. Staggers, for—well, since 1989, so I think we are ready to go forward.

Mr. Gekas.

Mr. GEKAS. I wanted to amplify the question that was posed by the chairman when he asked what the administration's position is.

We have some ability to glean what that position is in the President's budget, do we not? Is it not true that the President's budget offered an increase pending authorization, or assuming reauthorization, at $327 million, which, in effect, is an increase. That demonstrates——

Mr. FRANK. If the gentleman would yield, I think that was level funding——

Mr. GEKAS. It stays flat?

Mr. MARTIN. Yes, Congressman, that is correct. They have recommended $327 million, which was also appropriated for fiscal year 1991.

Mr. GEKAS. So that we infer from that that there is no return to the presidential years where there was a point of destruction of the legal services made almost in every budget. So we have at least a beginning of an idea that the administration wants to see Legal Services proceed.

Mr. MARTIN. Mr. Congressman, that is true. In fiscal year 1991, the $327 million was an increase over fiscal year 1990, and I think it is clear that this administration is interested in seeing that the Legal Services Corporation is adequately funded within its budget constraints. There is no indication to me of anything to the contrary. I think we will get support from the administration to carry out the mission of the Legal Services Corporation.

Mr. GEKAS. What have you found in your forays into New York and West Virginia about the real points of conflict between the locals and what is conceived to be the ruling body in Washington?

Mr. MARTIN. If the ruling body referred to is the Legal Services Corporation, I have found that people in the field, executive directors, are anxious to have a dialog and meet with me and my staff. I think they are anxious to understand the direction that I want to take the Corporation.

Mr. GEKAS. What are the points of conflict that you have found?

Mr. MARTIN. I was getting to that.

The first and foremost thing that I hear is the need for increased funding. They all tell me that they are underfunded, that there are unmet legal needs. That is not a point of conflict; that is just what they are telling me.

Mr. GEKAS. We will always have that. Every year, no matter what the funding level is, we will always have that.

Mr. MARTIN. That is right.

Mr. GEKAS. I am talking about the jurisdictions and the themes of accuracy——

Mr. MARTIN. Well, they are concerned about a threatening attitude from the Corporation. They are concerned about the way that monitoring is conducted; that is, how we assess how the Federal funds are being spent, how the programs are being run, whether or not there are improper expenditures. The auditing process is, I would say, a sensitive point with them.

Mr. GEKAS. Locals don't like what the Corporation is doing with respect to monitoring?

Mr. MARTIN. In many instances.

Mr. GEKAS. That is also to be expected. I have never seen it otherwise.

Mr. MARTIN. There is a natural tension between a regulator and those who are regulated.

Mr. GEKAS. What I wanted to know was specifically some of the things that have come to the point of controversy in the Congress that have emanated from this process. For instance, the requirement or the perceived need for timekeeping. What do the locals say about that?

Mr. MARTIN. I can't speak for all of them. I can speak for individuals who have indicated to me—and our grantees are all over the field on that—many of the programs, especially the larger ones, already keep time records, and they do that for a variety of reasons. Some for good management purposes, others because other funding sources require it. LSC does not now require it, so they don't do it for the funds that we—that Congress appropriates.

Other programs say it is unnecessary, it is not a management tool they need. I was in Cleveland last week, and was told that by a major program executive director. So as to timekeeping, many do it, many do it as a management tool, and many do it because they are required to. Others, I would say probably smaller programs, don't do it out of a perceived need for efficiency, economy, and it is just a headache.

I don't know of any private law firm that likes to keep time, but they all do it.

Mr. GEKAS. Isn't it—I thought that perhaps one of the driving forces behind the idea of timekeeping for our semipublic or quasi-public or totally public corporations like Legal Services is that if, indeed, we have waiting lists for a lot of the different services, timekeeping would be able to indicate how much time is being devoted to something that deprives others of moving up on a waiting list, for instance.

I think utility of the allocation of time is extremely important, but you find that from the locals, you hear complaints mostly that it might be unnecessary, or in some cases, already done, so it might be a moot point as to that.

Mr. MARTIN. It is a moot point to many of the programs because they already do it, and I don't have numbers with me to show how many do and how many don't, but I——

Mr. GEKAS. I think we should know that.

Mr. MARTIN. All right.

Mr. GEKAS. I think we should——

Mr. MARTIN. I will get that information for you.

[The information follows:]

LEGAL SERVICES CORPORATION
400 Virginia Ave., S.W., Washington, D.C. 20024-2751

Writer's Direct Telephone
(202) -863-1839

April 11, 1991

Congressman Barney Frank
U. S. House of Representatives
B-351A Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Frank,

Please find attached a copy of my recent correspondence with Congressman George Gekas regarding the number of Legal Services Corporation (LSC) grantees that use some sort of timekeeping system to track the expenditure of their LSC funds. Congressman Gekas requested this information so that it could be included in the record of the Legal Services Corporation reathorization hearing held by the House Judiciary Subcommittee on Administrative Law & Governmental Relations on Wednesday, March 13, 1991.

Please feel free to contact me should you have any questions or requests for additional information.

Sincerely,

David H. Martin
President

DHM/jbc

LEGAL SERVICES CORPORATION
400 Virginia Ave., S.W., Washington, D.C. 20024-2751

Writer's Direct Telephone
(202) -863-1839

April 9, 1991

The Honorable George Gekas
U.S House of Representatives
Washington, D.C. 20515

Dear Congressman Gekas,

I am writing in response to your request for information regarding the number of LSC grantees that use time keeping to track the expenditures of their LSC funds. The Corporation gathered its most recent information regarding grantees time keeping practices on form E(4) of the 1991 Application for Funding.

Any analysis can only be based on an examination of the grantee activities for which time keeping records are maintained. LSC grantees can identify their time keeping practices for both LSC funded and non-LSC funded activities. However, it should be noted that programs are not required to report the specific activities for which time records are kept, nor are they requested to identify the types of time keeping system they may have in place. Additionally, the Corporation cannot and does not require the use of a standardized time keeping system. As a result, any time keeping practices that are currently in place could range from a regimented system using time clocks and time sheets, to an honor system in which employees maintain their own time records.

The results of the attached time keeping analysis show that approximately 58% of all Legal Services Corporation grantees kept time keeping records for LSC funded activities during 1990. From that sample of grantees, an average of 34% of those who also received non-LSC funding from outside sources kept time records for their non-LSC funded activities during 1990. Three (3) LSC grantees did not report time keeping for any of their activities on the 1991 Application for Funding.

The following summarizes the types of cases for which LSC grantees kept time during 1990, and quantifies the number and percentage of grantees they represent.

TIME KEEPING CATEGORY	# OF PROGRAMS THAT KEPT TIME RECORDS	# OF LSC RECIPIENT PROGRAMS	PERCENTAGE
Class Action Cases	146	323	45%
Cases in Which Attorney Fee Award Possible	257	323	80%
Legislative Advocacy	193	323	60%
Administrative Cases	173	323	54%
Private Attorney Involvement Activity In Every Case Handled	91	323	28%
Average	187	323	57.79%

The attached chart categorizes data on LSC grantees time keeping activities for non-LSC funds. You will also find attached a copy of form E-4 from the 1991 Application for LSC Funding. A copy of this information has been forwarded to the Subcommittee on Administrative Law & Governmental Relations so that it can be included in the record of the March 13, 1991, Legal Services Corporation reauthorization hearing.

If you would like further information, or have any additional questions, please do not hesitate to contact me.

Sincerely,

David H. Martin
President

DHM/jbc

LEGAL SERVICES CORPORATION

PROGRAMS MAINTAINING TIME RECORDS DURING 1990

SOURCE: 1991 APPLICATION FOR FUNDING - FORM E(4)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
		TIMEKEEPING CATEGORIES								AVERAGE NUMBER OF RECIP. PROGS. MAINTAINING TIME RECORDS	1990 RECIPIENT PROGRAMS	PERCENT OF RECIP. PROGS. MAINTAINING TIME RECORDS (10)/(11)
	SOURCE OF FUNDS	TIME AND ATTEND	CLASS ACTION CASES	CASES IN WHICH ATTORNEY FEE AWARD POSSIBLE	LEGISLATIVE ADVOCACY	ADMIN. CASES	PAI ACTIVITIES	ALL CASES	OTHER			
1	LSC FUNDS **	292	146	257	193	173	260	91	42	187	323	57.79%
	NON-LSC FUNDS:											
2	TITLE XX	38	16	29	18	14	11	10	4	17	42	41.27%
3	OLDER AMERICAN	153	55	101	66	61	56	66	29	73	183	39.80%
4	OTHER FEDERAL FUNDS	31	14	24	13	13	12	13	5	15	22	67.42%
5	COMMUNITY DEV. BLOCK GRANT	22	9	16	7	8	10	9	3	10	38	25.88%
6	REVENUE SHARING	5	3	3	3	3	2	3	0	3	6	47.22%
7	STATE FUNDS	66	30	75	45	44	28	32	12	43	123	35.23%
8	LOCAL FUNDS	84	32	62	43	31	34	36	14	40	109	36.24%
9	UNITED WAY	64	27	47	29	22	23	29	8	29	145	20.23%
10	FOUNDATION FUNDS	64	22	47	32	32	17	16	13	28	77	35.93%
11	BAR ASSOCIATION FUNDS	33	8	24	15	13	14	10	4	14	57	24.56%
12	IOLTA	101	80	149	108	101	90	80	31	96	263	36.63%
13	ATTORNEY FEE AWARD - NON-LSC	64	36	74	38	37	28	28	11	40	93	42.63%
14	CARRYOVER FUNDS - NON-LSC	56	23	50	36	34	25	21	10	31	167	18.76%
15	OTHER NON-LSC	63	26	80	38	36	27	28	18	36	238	15.32%

LSC PROGRAMS THAT KEPT TIME RECORDS DURING 1990
(AS REPORTED ON FORM E(4) OF THE 1991 APPLICATION FOR FUNDING)

EXPLANATORY NOTE:

THIS CHART IDENTIFIES THE NUMBER OF RECIPIENT PROGRAMS THAT MAINTAINED TIME RECORDS DURING 1990. THE DATA ARE CATEGORIZED BY TYPE OF CASE OR ACTIVITY AND BY FUNDING SOURCE.

COLUMN (1) LISTS THE SOURCE OF FUNDING (BOTH LSC AND NON-LSC) UNDER WHICH TIME RECORDS ARE KEPT. COLUMNS (2) THROUGH (9) IDENTIFY THE TYPES OF CASES AND ACTIVITIES FOR WHICH TIME RECORDS MAY BE KEPT.

FOR EXAMPLE: COLUMN 3 (CLASS ACTION CASES) ROW 2 (TITLE XX)INDICATES THAT 16 LSC PROGRAMS KEPT TIME RECORDS FOR CLASS ACTION CASES UNDER TITLE XX FUNDING.

COLUMN (10) SHOWS THE AVERAGE NUMBER OF PROGRAMS THAT MAINTAINED TIME RECORDS. COLUMN (11) SHOWS THE NUMBER OF PROGRAMS WHICH RECEIVED GRANTS FROM LSC AS WELL AS OTHER FUNDING SOURCES. COLUMN (12) REFLECTS THE PERCENTAGE OF PROGRAMS WHICH MAINTAIN TIME RECORDS. THE PERCENTAGES ARE DERIVED BY DIVIDING COLUMN (10) BY COLUMN (11).

DATA FROM COLUMNS (2) AND (9) ARE OMITTED FROM THE AVERAGES AND PERCENTAGES CALCULATED IN COLUMNS (10) AND (12). THE DATA ARE OMITTED TO ASSURE THAT CALCULATIONS OF TIMEKEEPING DATA ARE NOT SKEWED.

** LSC FUNDS AS IDENTIFIED ON FORM-E(4) OF THE 1991 APPLICATION FOR FUNDING ARE AS FOLLOWS:

1 BASIC FIELD
2 NATIONAL/STATE SUPPORT
3 MIGRANT
4 NATIVE AMERICAN
5 OTHER LSC FUNDS
6 ATTORNEY FEE AWARD
7 PUBLICATION INCOME
8 LSC CARRYOVER FUNDS
9 COMBINATION OF SOURCES

TIMEKEEPING 1990 AND 1991

Form 8-4 1991
Page __ of __

Recipient Number: _____

Recipient Name: _____

Please indicate for both LSC and Non-LSC funds the activities/cases for which staff maintains time records by making a notati. in the appropriate column next to the appropriate activity (specify "Other" on a separate sheet). Indicate the timekeeping method used as follows: X = method same as previous year; A = method added this year; M = modified last year's method. Submit the new or revised timekeeping policy or procedure. For non-LSC funds, please insert the appropriate funding source code from the list on the bottom of this form. Leave space(s) blank if time records are not maintained.

TIMEKEEPING CATEGORY	ALL LSC FUNDS	NON-LSC FUNDS (Specify Funding Code #)											
1990		(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Time & Attendance													
Class Action Cases													
Cases in which Attorney-Fee Award Possible													
Legislative Advocacy													
Administrative: Adjudication or Representation													
Other:													
PAI Activities													
All Cases													
Other													
1991 (Projected)		(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)	(#)
Time & Attendance													
Class Action Cases													
Cases in which Attorney-Fee Award Possible													
Legislative Advocacy													
Administrative: Adjudication or Representation													
Other:													
PAI Activities													
All Cases													
Other													

NON-LSC FUNDING SOURCE CODES

30 # Title XX	38 # Revenue Sharing	46 # Foundation Funds	52 # Attorney Fee Award Non-LSC Case(s)	60 # Volunteer
32 # Older American	40 # State Funds	48 # Bar Association Funds	54 # Carryover Funds Other than LSC	99 # None of the
34 # Other Federal Funds	42 # Local Funds	50 # IOLTA (Interest on Lawyer Trust Accounts)	55 # Non-LSC Publication	Above
36 # Community Dev. Block Grant	44 # United Way		56 # Other Non-LSC Funds	

Mr. GEKAS. Yes. We should get an idea of who is—how many are keeping time and how many of them are mandated by other programs, like you said. That is important. And if others feel it is important to mandate it so that they can justify the expenditures of moneys, maybe Congress ought to learn from that and the headquarters of Legal Services ought to learn from that.

I have no further questions at this time.

Mr. FRANK. Mr. Reed.

Mr. REED. Mr. Martin, just to restate, I hope that it is the position of the Corporation that they want the reauthorization to proceed forth this year and be enacted?

Mr. MARTIN. Yes, that is correct, Mr. Congressman.

Mr. REED. With respect to the President's budget proposal, based upon your field travels, do you think that is a sufficient amount of dollars to carry out the assignment of the Legal Services Corporation?

Mr. MARTIN. That is a difficult question to answer. The programs are able to carry out their mission with the funding they have. There is a continual—not a complaint—but a suggestion I hear from field programs that additional funding would increase the ability of the programs to carry out their mission. So at the Appropriations Committee hearing before Senator Hollings last week, my Board of Directors recommended a funding level of $355 million for fiscal year 1992.

The ABA recommended a funding level of $426 million. So, I think you will find there isn't uniformity or agreement on what the funding level should be.

Mr. REED. May I ask another question? I believe there is an ongoing discussion about the use of private funds at the local level, about certain private grants that also fund Legal Services. Is that correct?

Mr. MARTIN. I am sorry, could you repeat your question, sir?

Mr. REED. On occasion, don't some Legal Services Corporations also have access to private grants of funds?

Mr. MARTIN. They do, indeed.

Mr. REED. What is the current policy with respect to Legal Services Corporation with the spending of those funds in terms of budgets? Could you give me just a brief idea?

Mr. MARTIN. I am not sure what you mean by your question. They are free to solicit other funds and they do. Other funds are an increasing resource that supplements the field programs over and above the levels that Congress now funds.

In the annual report we are just now in the process of creating, which will be the first one in a number of years, we are including a diagram on the other funds that are available and which programs seek them out.

For instance there is a substantial amount of funding from a source called Interest on Lawyers' Trust Accounts, IOLTA as an acronym, which is an increasing source of funding for the people that Congress also funds through the Legal Services Corporation.

Mr. REED. Just one final question. Is it the case, and you have been in the field most recently, that there are numerous people who are turned away from Legal Services because of the lack of resources? Is that a fair description of the current situation?

Mr. MARTIN. That is a fair description of what I am told by many, many executive directors.

Mr. REED. How would you remedy that, Mr. Martin?

Mr. MARTIN. There are only two ways. To either increase funding, or more efficiently use what monies we now are appropriated.

Mr. REED. Thank you.

Mr. FRANK. I would add that in my own case, we have in my office in Massachusetts, experience with people who come to us whose program, it turns out, requires private legal assistance. There is nothing that the Federal agencies will do and we have—I can say firsthand the agencies in Massachusetts simply cannot handle the caseload that they—of eligible people with legitimate complaints. These are not abstruse philosophical complaints. These are specific people with specific legal disputes. We refer them to the appropriate Legal Services Corporation and they are often—or actually, they have said to us, we went to them first and they told us they are too busy and can't handle it.

Mr. Ramstad.

Mr. RAMSTAD. Mr. Chairman, and Mr. Martin, I know the Legal Services in the past has been marked by—I guess this is an understatement to say—considerable controversy between the Board and the Congress and between the Board and local recipients. Can you assure the committee that this will improve under the new Board, and if so, how?

Mr. MARTIN. I believe it will. I think the Board that the President has appointed is a Board that is committed to the mission of the Legal Services Corporation. I believe it is a Board that will reach a consensus on issues. I think it is a Board that is dedicated to meeting and resolving problems, and the issues that are facing us. I feel as if I am off to a good start with the Board, and with our own ideas I think we agree on how to proceed, and then it is just a matter of working together over the next couple of years to ensure that we do deliver quality legal services in a sufficient fashion.

Mr. RAMSTAD. Thank you, Mr. Chairman.

Mr. FRANK. Thank you.

Thank you very much. Mr. Martin. We will, of course, be in continuous conversation with you as we proceed.

We will next hear from our panel. Mr. William McCalpin of the National Legal Aid and Defender Association; Mr. Dwight Loines, National Organization of Legal Service Workers in the UAW; and from the American Bar Association, Mr. Jack Londen.

Mr. McCalpin, it is always a pleasure to have you back. Mr. McCalpin, former President of the ABA, has been a distinguished—not a former President——

Mr. MCCALPIN. Secretary.

Mr. FRANK. Thank you for the correction. A long record of involvement in the affairs of the Legal Services Corporation from the bar association's perspective and consistently a very helpful one from out standpoint. Please go ahead.

STATEMENT OF F. WM, McCALPIN, PRESIDENT, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

Mr. McCALPIN. Thank you, Mr. Chairman. For the record, I am F. Wm. McCalpin. I am a lawyer from St. Louis, MO. I appear before you this morning in my capacity as President of the National Legal Aid and Defender Association.

Because I have not had the pleasure of meeting some of the members of the subcommittee before this, and in light of some of the things I may say, let me just add briefly that my association with Legal Services began in November 1964, at a meeting conducted by the then Department of HEW to explore the legal involvement—involvement of the legal profession—in the then war on poverty. I made the first contact between the ABA and the OEO. I served on the National Advisory Committee of OEO Legal Services program during its existence. I have been involved in various other ways, including twice chairing the ABA Standing Committee on Legal Aid.

At one of those times, it was my privilege to participate in the draft of the first regulations of the Corporation and in the orientation of the first Board of Directors of that Corporation.

That led to my appointment to the Board of Directors of the Legal Services Corporation in 1979. I was President of that Corporation, chairman of the Board or President, I have forgotten, in 1980 and 1981. I have recited this brief history so that you may understand where I come from and understand some of the things that I am going to say.

I would like to begin by dispelling two myths, two misconceptions, misstatements which have circulated concerning the Corporation and the Legal Services program so much that they have gotten a certain currency, I suppose, like the big lie technique. If you say them often enough, they appear to be true.

One is that it was the intent that the Legal Services program of the Corporation—that it was intended to be apolitical, sterile politically. The other is that it was intended to encompass only one-on-one traditional representation, disputes involving divorces, domestic relations, landlord/tenant or perhaps consumer issues. Those are misconceptions. They ignore or deliberately misstate the history and the intent and purposes of this program as approved by the Congress.

Let me take up the political one first. There are those who say that the Legal Services program has strayed from its original intent because it so often sues Government or involves itself in issues which arise out of legislation. They ignore the history and, indeed, the statement of President Nixon when he sent to the Congress the initial piece of legislation out of which the Corporation arose. He said in that report, "Much of the litigation initiated by legal services has placed it in direct conflict with local and State governments. The program is concerned with social issues and is thus subject to unusually strong political pressures. However, if we are to preserve the strength of the program, we must make it immune to political pressures and make it a permanent part of our system of justice."

Contrary to what the critics say, such litigation is essentially intended to enforce rights granted to individuals by the Constitution or by statutes and not to create new ones. Government is usually the adversary because it is the one denying or abridging those rights.

If this makes the program political, it is no more than President Nixon recognized and perceived when he sent the legislation to the Congress.

As to one-on-one traditional representation, there is absolutely nothing in the Legal Services Corporation Act or its legislative history to support that myth. The act states, in section 1001(2) that "A purpose, among others, is to continue the present vital legal services program."

House Conference Report 95–825 makes clear that the reference there was to the OEO legal services program. At least from 1967 on, that program included class action impact cases designed to improve opportunities for low-income persons.

Surely, the Legal Services program covers domestic relations, landlord/tenant, consumer and those traditional cases, but, as President Nixon said, it also is concerned with broader social issues in direct conflict with Government at all levels.

The persistence of these misconceptions underlies some of the debate which continues today in this reauthorization process and has marked the debate over the years. Let me touch on just a couple of areas.

One, the principle of local control. The principle that local legal aid programs would be run by local boards responding to local needs has been the bedrock, fundamental conservative aspect of this program since its very beginning. It is the essence of conservatism, decentralization. That is an ABA policy which was adopted by its house of delegates some years ago, but more importantly, it is fundamental in the act itself.

I refer to you section 1007(c), which says that 60 percent of local boards of directors must be lawyers licensed in the jurisdiction where the program operates and one-third must be eligible clients of that program.

Second, in 1007(a)(2)(C), there is the provision for priority-setting in which that local board, so constituted, is required to determine the needs for service for significant segments of eligible clients and to provide training and support to see to it that the program is able to meet those needs. That principle is undermined by certain of the debates going on.

One is competitive bidding. As envisioned by recent Corporation-suggested regulations, they, here in Washington, would determine who in the local community would provide the service, what service would be provided. Whether it would be in a narrow area, bankruptcies only, divorces only, or broader area is left entirely to determination here in Washington.

More importantly, it seems to me, is that the prospect of competitive bidding runs the risk of losing the private attorney involvement which has been so much a feature of the program for the last 10 years. There are now more than 136,000 lawyers in this country who are providing pro bono legal services in support of this program; and if competitive bidding awards the contract in a particu-

lar area to a single law firm they are going to lose the contributed services of the rest of the lawyers in that community.

Let me touch on the delivery system. The way the program has developed over the years, the delivery system is essentially a staff program supplemented by private attorneys on either a pro bono or a low-level-of-compensation basis supported by National and State support centers. The aspiration, the hope, is that this system will provide equal justice to the indigents of this country, that it will make available all of the things that lawyers do for those people who can pay for access to our justice system.

There are several ways in which the debate has focused on attempts to make inroads into that delivery system. One is local board approval of representation to be undertaken by the lawyers of that program. That concept violates ethical provisions in two ways, and remember that the act says that the lawyers must adhere to ethical provisions.

One, it means that there is the prospect that lay persons may control the services of lawyers with the board making the decision. Furthermore, it is administratively unworkable. Second, such a board cannot make an informed decision unless it knows the facts of the case and the law involved and that violates the attorney/client privilege in violation of rule 1.16 of the Model Rules of Professional Conduct.

A second incursion is the restriction on legislative representation. There are those who would deny such representation entirely and who say it has always been denied. That is equally untrue. The act presently and has always permitted legislative representation when the problem of a particular client is involved, or in response to a request from a member of the legislature. There are those who would deny that.

The legislative advocacy is important. There has been a recent case in Iowa involving a liver transplant where the legislative advocacy overturned an administrative denial and made such a transplant possible.

In California, a program representing a Korean orphan succeeded in changing the Social Security law as it affected adopted children generally.

Furthermore, there are restrictions on administrative advocacy. There are those who say it is all right to get involved if a single client's problem is involved, but not in a rulemaking procedure. There are many examples of the need for such representation. The most recent one was in Illinois where the agency method of calculating a benefit turned out to be improper and administrative advocacy turned that around.

Let me last touch on funding. Mr. Reed, before he left, asked a question about funding. Presently, the sources of funding for local civil legal aid programs are the Congress, through the Legal Services Corporation, other Federal agencies whose regulations and restrictions may not be completely consistent with those in this act, State and local government funds out of general appropriations or special funds—some States put surcharges on filing fees and that sort of thing in order to provide funding for legal aid—IOLTA funds, which were referred to a moment ago and which are an increasingly important source of funding for the programs, United

Way organizations, private foundations, private gifts, and public fund-raising efforts from private citizens.

In my own town of St. Louis 3 weeks ago, we had the first Justice for All Ball. Four hundred and twenty-five people came out on a Friday night and contributed. It was a pleasant social event. It brought more support generally to the program and it raised about $25,000, in addition, for the support of the program.

Presently, all but non-Federal, public funds are subject to restrictions of the act. There are those who would subject all funds to the provisions of the act. I see no reason why State and local publicly appropriated funds should be controlled by the Congress, nor do I see any reason why individual private contributions intended for a specific purpose should not be used for that purpose.

I suggest to you that there is a constitutional issue if the purpose of the funds is to petition for the redress of grievances.

It really—it is just not right for the Congress to try to control funds raised and devoted to this purpose by others.

I thank you, Mr. Chairman, and I have probably taken longer than I should have, but I feel so strongly about these matters.

[The prepared statement of Mr. McCalpin follows:]

PREPARED STATEMENT OF F. WM. MCCALPIN, PRESIDENT, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

Mr. Chairman and members of the Subcommittee, my name is F. Wm. McCalpin. I appear before you today as the incumbent president of the National Legal Aid and Defender Association. It has been my privilege to appear before committees of Congress with oversight responsibilities for legal services on numerous earlier occasions, sometimes representing the American Bar Association and on other occasions in my capacity as the then Chairman of the Board of the Legal Services Corporation. Last May, I had the honor of appearing before this subcommittee to urge its members to consider several proposals to amend the Legal Services Corporation Act which had been developed by NLADA[1], our companion organization, the Project Advisory Group[2], and other individuals and entities who are engaged on a daily basis in delivering civil legal services to indigents in this country. My principal purpose today is to provide the new members of the subcommittee with our perspective on the proposals which will form the basis for your deliberations on a new authorization bill for the Legal Services Corporation and to urge your consideration of several issues of great importance to the legal services community.

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[1]NLADA, which was founded in 1911, includes among its membership 741 civil legal aid programs throughout the United States, as well as 1,047 individual members, the great majority of whom are lawyers or law firms.

[2]The Project Advisory Group is the national organization of legal service programs which receive funding from the Legal Services Corporation. Through our staffs here in Washington and our officers, boards of directors and committees we provide our members with information, training and support as they fulfill their professional obligation of providing legal services to poor people across America.

First let me thank you, Mr. Chairman, for moving forward during the last session of Congress with consideration of the reauthorization of the Legal Services Corporation. Before that it had been a long time since we had come to the table together, so long in fact that I believe a short review of where we have been would not be amiss, especially for the new members of the subcommittee.

It is nearly 17 years since the Legal Services Corporation Act completed its legislative journey and was signed into law by President Nixon in July 1974. Almost 14 years have passed since the Corporation was last reauthorized by the Legal Services Corporation Act Amendments of 1977. The Corporation has been without Congressional authorization since the 1977 reauthorization expired on September 30, 1980. Aside from riders in annual appropriation acts, the last time that reauthorization legislation passed out of the Judiciary Committee and through the House of Representatives was ten years ago when H.R. 3480 was adopted, but that bill died in the Senate.

Much has happened since then. By virtue of stringent fiscal policies in the last eleven years, we have today a substantially larger and different poverty population. New ethical rules governing the conduct of lawyers have been adopted in nearly every state in the union and opinions have been issued interpreting those rules in the context of legal services to the poor. We have had a

succession of directors and officers of the Legal Services Corporation, some of them openly bent on destroying the Corporation or severely hampering its efforts to provide legal services as contemplated by the Congress. Today we have a new Board of Directors and a new President at LSC, but it remains to be seen whether or not they will be fully supportive of the program. Finally, I submit to you, this is the seventh Congress to sit since the Corporation was last reauthorized and the personnel on the relevant committees of both Houses have changed significantly. In view of these facts, I think it may be useful to review a bit of history and restate some underlying basic principles.

I need not remind you that in the Preamble to the Constitution our forefathers stated clearly and forcefully the purpose of the government they were creating:

> We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense . . . .

and so on. It is noteworthy that "establish justice" precedes and is the basis for "domestic tranquility" and that both come before "provide for the common defense". I think that sequence and those priorities are not accidental. Despite our nation's recent victory in the Persian Gulf, we need constantly to bear them in mind.

Until passage and implementation of the Economic Opportunity Act of 1964, the federal government had not sought to establish justice for poor people by providing support for their representation in civil legal matters. Then, for the first time, the federal government began to fill this void in the objective stated by our forefathers in the Preamble of the Constitution "to establish justice". Even then, this support was not a legislative mandate but was accomplished through administrative action by Sargent Shriver as the Director of the Office of Economic Opportunity. It was not until legal services was included as a line item in the budget of OEO that the Congress gave formal, legislative support to this cornerstone of our justice establishment.

The OEO legal services program stepped on many political toes. Senator George Murphy of California led the drive for an amendment to the Economic Opportunity Act which would have prohibited legal services programs from bringing actions against government at any level. Then Governor Reagan tried to veto funds for legal services in California. Vice President Spiro Agnew levied virulent attacks on all legal services programs because one had represented indigents being displaced from their homes by a highway project. In response to these attacks there developed the concept of the Legal Services Corporation which was characterized in House Report No. 93-247 as ". . . a bipartisan effort to establish an independent corporation to replace the Legal Services Program", at

p. 1. Critics of the legal services program in recent years and proponents of restrictive legislation have frequently misrepresented the basic function and purpose of the program by insisting that it has departed from an original intent of one-on-one representation of poor people and has erroneously strayed into representation of the poor in political issues. Such statements are totally at variance with the history of the legislation.

That same House Report No. 93-247 quotes the following from President Nixon's recommendation in his 1971 message urging creation of the Corporation:

> Much of the litigation initiated by legal services has placed it in direct conflict with local and State governments. The program is concerned with social issues and is thus subject to unusually strong political pressures. . . . However, if we are to preserve the strength of the program we must make it immune to political pressures and make it a permanent part of our system of justice.

The House Report also quoted Frank Carlucci, formerly director of the OEO and subsequently Secretary of Defense, and Robert W. Meserve and Edward L. Wright, both presidents of the American Bar Association to the same effect. The Senate Report (No. 93-495) contains similar views of the late Senator Robert Taft.

The Statement of Findings and Declaration of Purpose contained in Section 1001(2) of the Legal Services Corporation Act finds and declares that it is the purpose and intent of the Act ". . . to continue the present vital legal services program." If there were any doubt as to what that "present vital legal services program" was, that doubt was resolved when the Congress amended the Act in 1977. House Conference Report No. 95-825 at page 9 states:

> The Senate amendment clarifies the Congressional intent respecting the scope and purpose of the legal services program by specifying that the program is intended to assist in improving opportunities for low income persons consistent with the purposes of the Economic Opportunity Act of 1964, as amended.

Since at least 1967 the OEO legal services program had included as an important element so-called impact litigation, much of it directed at changing the way government at all levels treated poor people. While Congress has, in the meantime, imposed certain limitations on such litigation brought in the form of class actions, there is clearly no support in the Act or the legislative history for the notion that representation of poor persons was intended to be limited to non-controversial, one-on-one representation. From the very beginning it has been recognized, even by the then President of the United States, that such representation involves social issues, concerns state and local

governments and has political repercussions. From the very beginning the Legal Services Corporation Act was intended to continue what it termed as the vital legal services program of the OEO. That vital legal services program provided the kind of representation that President Nixon described and which did indeed produce political repercussions from Senator Murphy, Governor Reagan and Vice President Agnew.

From this legislative history certain conclusions and principles can be drawn. First of all, it seems clear from the findings and declarations contained in Section 1001 of the Act that it is intended to implement the Constitutional mandate "to establish justice" for poor people. Second, the justice to be established is that broad area of justice which was the objective of the legal services program of the OEO. Third, it is quite obvious from the history of the Act, the reauthorization and the appropriation riders that the Congress has expressed its intent with respect to the scope of representation to be provided and that it is inappropriate for the administrators of the program to impose restrictions on substantive or procedural representation not specified by the Congress. Fourth, the very reason for the creation of the Corporation mandates that representation by its grantees is not to be bent to conform to partisan political or ideological considerations.

Against this background and from my perspective as a former "insider" at the Corporation and my subsequent experience with the American Bar Association Standing Committee on Legal Aid and Indigent Defendants, as well as in the leadership of NLADA, I would like to share with you some of my thoughts and offer some recommendations as you proceed to restructure the Act.

There is no enterprise that cannot benefit time to time from efforts to enhance and improve it. Anything we do, whether it be in government or in the private sector, we can do better. That certainly includes the delivery of legal services to poor people in this country which has been evolving in form and in scope now for more than a century.

What we have today is a fundamentally sound legal services delivery system which, though woefully underfunded and continually besieged, continues to work extraordinarily well for our clients. It can be made to work better. I am not the first to tell you that, but I echo the statement of others. Nevertheless, the basic system has served us well for twenty-five years; it should not be undermined.

As I have indicated, NLADA, PAG and others who are interested in improving legal services to the poor have been working for some time to develop specific proposals that we believe can both strengthen the program and lower the decibel level of recent

divisive public debate. This subcommittee considered those proposals last year and incorporated several of the principles that we developed when it adopted the subcommittee's proposed bill. I would like to summarize briefly those proposals that we consider to be of critical importance. They fall into three broad categories:

1. Preserving and strengthening local control;
2. Deregulation of the use of private funds and accounting for those funds; and
3. Permitting full scope of representation

LOCAL CONTROL

A fundamental principle which has undergirded the entire legal services system since its inception is that the program is controlled and directed, not by bureaucrats in Washington, but by local attorneys, clients and other citizens who understand the needs and resources of the communities in which they live. The principle of local control and local priority setting was a sound one underlying the legal services program that was first established within the Office of Economic Opportunity in 1964, and that same principle was incorporated into the Legal Services Corporation Act in 1974 and reinforced in 1977. The Act and the legislative history are replete with provisions and comments about local decision making in the operation of the local programs. That

also is the thrust of a policy resolution approved by the House of Delegates of the ABA in 1984.

Our strong belief is that the vehicle for and the nature of the legal services required in a particular community are best decided by the persons in that community responsible for the conduct of the legal services program. In saying that, I am cognizant and comforted that Congress has required that 60% of the local board members must be lawyers, that 50% must be lawyers named by bar associations representing attorneys in the local area and that one-third must be clients eligible to be served by the program. This, it seems to us, is a recognition of the reality that local problems are best identified and addressed by local people making local decisions. This concept of local decision making is tied directly to the priority setting provisions in Section 1007(a) (2) (C) of the Legal Services Corporation Act.

We want to strengthen local control. To do this we propose that this subcommittee support the amendment to Section 1007(c) of the Act that appeared in the subcommittee bill last year. This amendment included the board appointment provisions, known as the McCollum Amendment, which are currently included in the LSC Appropriation Act, with a slight modification to take into account the special situation of national support programs. The amendment also clarified that the current restriction on board member compensation applies only to attorneys who receive compensation

from the LSC recipient on whoee board they sit; it prohibited any local board appointment criteria based on political party affiliation; and expressly permitted communications between recipients and those organizations that have appointment authority over their boards.

The amendment specified that the local board of each recipient, and not the Legal Services Corporation, is responsible for the overall governance of the program and should determine broad policy matters related to the recipient. Thie means that the local board, and not LSC, sets priorities in the allocation of available reeources and determines the various eervicee, i.e, representation, training, technical assistance, etc., that the program will make available. The local board is responsible for eetablishing financial eligibility criteria within the limits set by law. The local board eetabliehes policies that govern the fiscal, adminietrative and representational activities of the recipient, including compliance with provisions of the LSC Act and regulations. The local board, and not LSC, determinee the types of cases or matters its attorneys may undertake to handle. The local board determines how best to utilize staff attorneye, paralegals and other available and appropriate staff as well as private attorneys and others, to provide legal aeeistance to eligible clients and to carry out activities related to the delivery of legal assistance.

The amendment also specified that the local board must not interfere with the lawyer/client relationship of program attorneys; that board members must comply with the legal and ethical requirements on conflicts of interests applicable to the jurisdiction; and that local boards cannot act on a case-by-case basis in determining case types or setting priorities.[3]

We also urge the subcommittee to strengthen and clarify the local priority setting provisions of the Act by amending Section 1007(a) (2) (C). Program priorities would be subject to the principles enunciated in section 1001 of the Act as well as to any goals specifically set forth in legislation by Congress, but the Corporation would not have the authority to establish its own separate goals nor would it have the authority to promulgate suggested national priorities, as I understand is being proposed in the latest version of the McCollum-Stenholm bill. This is necessary not only to preserve local control but also to make the programs immune to political pressures as its progenitors intended.

We would also require that all recipients, through their boards of directors, undertake an annual review of priorities and set priorities periodically through a process that involves a

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[3] The subcommittee bill did, however, permit local governing bodies to reject the selection of cases by the recipient. Our proposal did not contain such a "right of rejection" and I hope the subcommittee's new bill will eliminate this provision.

review of the legal needs of indigent clients in the community. That legal needs assessment would require the participation of clients, community groups, the organized bar, program staff and private attorneys involved in the delivery of legal services to eligible clients.

We also support the provisions of the subcommittee bill that sought to delimit the role of the Corporation. Section 1006 (b) (1) (A) was amended to prevent LSC from imposing restrictions or requirements on representation of clients that are in addition to or are inconsistent with the provisions of the LSC Act or other relevant law. The intent of this provision is quite simply to clarify that Congress retains the sole authority to impose new restrictions on representation by legal services programs.

The general thrust of the McCollum-Stenholm proposals, we believe, is not consistent with the principle of local control. Our position is this: the Legal Services Corporation does not now, nor has it ever, nor should it set national priorities. Instead, local program boards, based on a legislatively mandated process to determine the needs of clients within their service areas, should decide how to allocate scarce resources and what types of cases to take. Local programs should regularly reexamine the needs of the client communities they serve to determine what their program priorities should be. Priority setting should remain with the boards of directors of legal programs whose members -- attorneys

practicing in the community, client representatives and other local citizens -- are in the best position to determine the needs of their own communities.

In addition, there is another aspect of the McCollum-Stenholm package that would have a severe negative impact on the principle of local control. The competitive bidding scheme envisioned by the current staff of the Legal Services Corporation and incorporated in the McCollum-Stenholm package strikes at the very heart of the locally controlled delivery system that has served us so well for more than two decades.

If the Corporation's vision of "competition" should come to pass, decisions as to the legal needs of low-income people would be made, not by local people on the basis of local needs, but by LSC bureaucrats in Washington, D.C. who could decide, without any local input, to fund only divorces in Houston or only child support enforcement in Boston. Housing assistance might be on the LSC agenda in Des Moines but unavailable to a single mother in Cleveland, regardless of the locally determined needs in those locales. LSC would not have to assure that there would be a general service provider available in each service area. Clients with a multitude of problems would no longer be able to get all the help they need in one place but would be required to find their way through a confusing maze of unconnected service providers. Local control and local accountability would be no more.

We believe that would be a dieaster for our clients. We urge you to reject any proposal that would impoee competitive bidding on the legal services eystem. We do not believe that there has been a caee made, nor that one could be made, that could poeeibly justify the total disruption of a proven eyetem of eervice delivery that has evolved over the last quarter of a century.

Time after time the McCollum-Stenholm package would permit LSC to eubstitute its judgment for that of the state or local bar or courts. Its new attorney's fee provisione, as I understand them, would permit the LSC preeident to determine whether a recipient has violated the etandarde of Rule 11, regardless of what is found by the court in the appropriate jurisdiction. Thoee eame provisions would prohibit recipiente from claiming attorneye' fees from private entitiee, regardleee of the law on attorneys' fees in the juriediction where the action was commenced, and would permit LSC to recoup all attorney's feee received by programe, regardlese of the terms of any award ordered or approved by the courts of the juriediction. Its new definition of attorney-client privilege would completely overturn the body of law regarding accees to records that hae evolved around the country. Its provisions on solicitation would apply to LSC attorneye selective language from an outmoded formulation of the Code of Profeeeional Responsibility that wae never intended to

apply to legal services attorneys or others working for non-profit organizations in the first place.

When Congress passed the LSC Act it made it clear that legal services attorneys should practice law on behalf of their clients, subject to the same locally determined court rules and precepts of ethics and professional responsibility that were applicable to other attorneys practicing in those jurisdictions. I urge this subcommittee to remember that basic tenet and to reject all of those provisions of the McCollum-Stenholm package that change those rules or permit LSC to substitute its judgment for that of the local or state authorities charged with responsibility to oversee attorney accountability in their jurisdictions.

DEREGULATION OF THE USE OF PRIVATE FUNDS

Closely related to our goal of strengthening local control and local priority setting is our proposal to deregulate the use of private funds received by LSC grantees. We believe Section 1010(c) of the Legal Services Corporation Act should be amended to provide that non-LSC funds may be used by recipients for the purposes for which they are provided as determined by the persons or entities who provide them, so long as recipients adopt a system of recordkeeping, which may include timekeeping, that clearly discloses the types of activities supported by these non-LSC funds.

This position is in contrast to both last year's subcommittee bill, which maintained the current restrictions on private funds, and to the McCollum-Stenholm proposal which would apply the same restrictions placed on LSC funds to all non-LSC funds received by LSC grantees regardless of their source. Thus, the restrictions in the LSC Act would apply not only to funds provided by private individuals, charities or foundations, as is true under current law, but also to public funds provided by state and local governmental entities, and specifically to funds derived from Interest on Lawyers Trust Accounts (IOLTA), a source of substantial non-LSC funds for legal services programs in most states. Although for most legal services programs LSC remains the primary funding source, in many states IOLTA funds provide an increasingly large share of program resources. For a number of programs, LSC funds represent far less than the majority of funds, with IOLTA and other public funds making up the bulk of program resources.

Just as we would argue that Congress retains the right to determine what activities may be prohibited using LSC funds, we believe that other funders, whether private charities or state government agencies or IOLTA programs in various states, should have the same right to determine how their funds are to be used. If the board of directors of a local LSC grantee determines there is a particular need in its community for service to clients or groups or for work on issues which may not be done with LSC funds, why should that grantee not be permitted, and indeed encouraged, to

seek private funding for that purpoee? If etate government decides to provide funding for legal eervices to the poor, whether through direct appropriation or filing fee eurcharge or other means, why ehould that government not be permitted to determine to whom those funds will be granted and what eervicee can be provided?

And what about IOLTA funds? Every state in the nation except Indiana now hae an approved IOLTA program. Theee programe, some of which are legislatively established and eome of which are judicially mandated, were initially conceived in the early 1980s to supplement LSC-funded eervicee, not merely to duplicate them. IOLTA grant decisions are generally made by state governing bodies that are acutely aware of critical unmet legal neede in their reepective etatee. Should not thoee bodiee have the right to direct their funds to the entities they believe are beet qualified to deliver the eervices they wish to fund? Should not they be the onee to determine what those eervicee will be?

Surely the proponente of theee reetrictions on non-LSC funde do not believe that the United Way of Greater Los Angelee or the Maesachusetts Legal Aseietance Corporation or the Florida Bar Foundation's IOLTA Program muet find a provider other than the eetabliehed LSC-funded legal eervicee program to deliver the legal eervices they wieh to fund, even if the LSC-funded program is clearly the best qualified to provide the eervice. Does the Congress wieh to discourage theee private and public efforte to

narrow the huge gaps in services that exist for poor people all over the country? Everyone recognizes that federal funding meets only a small fraction of the need. Programs must seek additional, outside funding. Don't hamstring them in their efforts. We believe that efforts to restrict the use of these private and non-LSC public funds are unwise and may well be unconstitutional. We urge the subcommittee to reject them.

At the same time, we recognize fully the need for LSC grantees to account for all of the funds they receive from other sources and to report the use of those funds separate and distinct from Corporation funds, pursuant to generally accepted accounting principles. The subcommittee bill from last year provides that the governing body of each LSC grantee must adopt a record keeping system, which may include timekeeping, and which discloses the types of activities supported by the non-LSC funds. Many local programs already have devised record-keeping and/or timekeeping systems designed to meet the information needs of local boards and managers and the requirements of other funders. Our proposal would permit, subject to these locally designed systems of recordkeeping, non-LSC funds to be used in accordance with the purposes for which they are provided by the funding source.

A word about timekeeping -- the McCollum-Stenholm package would impose burdensome, national, timekeeping requirements on all LSC grantees, requirements that apparently could not be adjusted to

respond to the needs and characteristics of individual programs and which would supplant the locally designed systems that now exist. Estimates for the initial cost of implementing such a national system for LSC grantees range as high as $10 million and do not include the ongoing costs of administering the system by grantees or any of LSC's start-up or administrative costs. In effect, all of the costs would be subtracted from resources intended to be used to provide legal services. Before even considering the imposition of such a costly requirement on the legal services program, we would simply echo the 1988 recommendations of the General Accounting Office that in order to justify any national timekeeping requirement, LSC should survey recipients to determine what information they now collect; determine what information LSC needs to monitor performance; establish objectives for any management information that would be required by LSC; and systematically analyze and assess the costs and benefits of any national information system. To date, LSC has done none of these tasks; until such time as it does, we urge the subcommittee to reject any effort to impose or permit LSC to impose a national timekeeping system.

PERMITTING THE FULL SCOPE OF REPRESENTATION

There are numerous restrictions contained in the proposed McCollum-Stenholm package that would limit the ability of legal services programs to provide their clients with the full scope of

legal representation available to paying clients of private attorneys. The package would prohibit legal services attorneys from representing clients in cases where redistricting is the remedy sought for violations of the Voting Rights Act.[4] The package would subject legal services attorneys to procedural obstacles and ethical restriction not applicable to any other lawyers. The package would restrict the use of non-LSC resources for representation of aliens, which is permitted under current law. We urge the subcommittee to reject all of these limitations on the scope of representation.

There is one additional area of legal representation that is of tremendous importance to legal services clients, that the McCollum-Stenholm package would completely eviscerate. This is the area of legislative and administrative advocacy which is permitted in certain circumstances under current law subject to numerous limitations and safeguards to protect against perceived abuse. In contrast, the McCollum-Stenholm package would place an absolute bar on legal services representation in legislative and administrative forums, except under the most limited of circumstances. It would prohibit entirely the representation of eligible indigent clients

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[4] The subcommittee bill adopted a restriction on redistricting cases, but limited its applicability to only those cases involving Congressional reapportionment. Although we oppose any restriction on representation in Voting Rights cases, the subcommittee version would have a minimal impact on legal service clients since most cases handled by LSC funded programs deal with local redistricting issues.

in two different situations: in the adoption, amendment or revocation of an executive order or an administrative rule by any agency of the Federal, state or local government; and in the consideration of any legislation by any Federal, state or local legislative body or by initiative, petition or referendum. It would apparently permit representation in administrative agency adjudicatory proceedings only where the legal rights of specific individual clients were being resolved, but not in rule making proceedings that could affect the legal rights of large numbers of eligible clients. It would also eliminate the right of recipients to respond to inquiries or requests from legislators or administrative agencies, depriving those who make the law of the knowledge and expertise of those attorneys who have first-hand experience in its enforcement.

The McCollum-Stenholm approach would bar representation which has been permitted from the beginning of the Corporation under Section 1007 (a) (5) of the Act as refined by provisions of various appropriations acts since 1983. In all that period legal services attorneys have been permitted to represent eligible clients when such administrative or legislative advocacy was an appropriate means to resolve these clients' problems or when a request was received from the administrative or legislative body seeking assistance in the performance of its responsibilities. The representation furnished in these situations is completely appropriate and is what any competent attorney would provide to his

or her client under the circumstances. Yet, the proposed amendment would prohibit any and all such representation.

The bill adopted last year by this subcommittee incorporated into the basic legislation the provisions from the Act and appropriations bills which have governed administrative and legislative representation for the past eight years. The bill prohibited grassroots lobbying. It is required that legal service programs have and represent a client or clients in such forums. It specified procedural safeguards against abuse. Those provisions have worked well. There are no serious substantiated charges that they have been violated. They do permit an appropriate means of representation when clients' interests require it. Without such a framework, legal services lawyers would be severely circumscribed in pursuing their clients' legal interests and securing their clients' legal rights. I urge the members of this subcommittee to follow the lead of their predecessors and to adopt a bill that permits legislative and administrative advocacy in appropriate circumstances.

OTHER AREAS OF CONCERN

There are a number of other areas of concern that need to be addressed as the subcommittee considers the parameters of this reauthorization bill. Many were addressed effectively by the subcommittee in last year's bill. Others remain to be debated.

For example, over the paet eeveral years, the monitoring function of the Legal Servicee Corporation has changed from an evaluative proceee that sought to improve servicee to the poor, to a highly adversarial procese that hae eought, as a primary objective, to punieh grantees for often mieperceived transgressions. Last year the eubcommittee bill moved the process back in the direction of firm but fair evaluation and overeight, clarified the due proceee rights of grantees, and included provisions to ensure that when violations are determined, appropriate sanctions are impoeed.

The eubcommittee bill eetabliehed criteria and time limits for investigating complaints againet recipients. It required the Corporation to promulgate standards and procedures to provide due process in monitoring, evaluation and complaint investigation, including standarde for access to personnel or other eeneitive recorde of recipiente. It provided for independent evaluation of a recipient's quality of representation.

The bill aleo clarified when LSC could defund or deny refunding or take other eignificant adverse action, including reductions in grante or contracts that must be proportionate to any eetablished violation of the LSC Act or regulations. It aleo clarified that hearings for termination or denial of refunding are to be provided when requested by an adversely affected party and

that such hearings are to be held before an independent hearing examiner with the opportunity to appeal to the LSC Board of Directors.

We urge the subcommittee to retain these provision from last year's bill.

To summarize, Mr. Chairman, we urge you to reauthorize the Legal Service Corporation with a mandate at least as broad as envisioned in 1974 and 1977 and without further restrictions, so that as our Pledge of Allegiance aspires, there may be "liberty and justice for all". The proposals we bring to you today are intended to attain that goal by strengthening local control and local priority setting while clarifying the role of the Corporation; by permitting the use of private and non-LSC public funds for the purposes for which they are provided, so long as a recipient adopts an appropriate recordkeeping system; by ensuring that legal services clients and their attorneys have available the full range of tools for representation that are available to clients of private attorneys; and by improving the Corporation's monitoring and enforcement procedures.

We have given much thought to these proposals and to language that would implement them. We will be happy to work with the staff of the subcommittse as you draft the legislation you will ultimately report to the full Judiciary Committee.

Again, Mr. Chairman, I commend you and your colleagues for undertaking this important task. We look forward to working with you as the reauthorization process proceeds.

Mr. FRANK. In light of your experience, and we have a fairly compressed witness list today, we are being a little more indulgent and what was most important was that you were always on the point and if people will stick to the subject, we have more willingness to listen.

Mr. Loines.

STATEMENT OF DWIGHT W. LOINES, PRESIDENT, NATIONAL ORGANIZATION OF LEGAL SERVICES WORKERS, DISTRICT 65, UAW

Mr. LOINES. Thank you. My name is Dwight Loines. I am president of the National Organization of Legal Services Workers and we are a part of the United Auto Workers Union.

I also have been an attorney in the Legal Services program. I worked in a New York program for 7 years.

The UAW, I want to point out, is a very strong advocate of legal services. It has been since the very beginning of the program and I can assure you that the UAW will continue to be a very strong supporter of the program.

We played a significant role in opposing the McCollom-Stenholm proposals in the——

Mr. FRANK. Mr. Loines, this isn't part of a history class. Let's talk about the substance of this issue.

Mr. LOINES. Thank you very much. I will now, then, specifically address and try to underscore some of the points that I have raised in my written testimony.

Number one, the union is strongly opposed to competitive bidding. We are opposed to it for a number of reasons. One, competitive bidding, from our point of view, creates a strong incentive to weigh cost over quality and in the long run, that means to us that experienced, dedicated staff people and practitioners are going to leave the program. They are going to leave Legal Services because they are not going to be able to tolerate the low quality that is going to develop as a result of emphasizing cost over quality.

Ironically, I should point out, the experience has been shown in the public—in the criminal defense area that competitive bidding, in the long run, leads to increased costs as opposed to reducing the costs. I should also point out that competitive bidding has not been subject to much discussion or debate in Congress. In fact, this subcommittee last year for the first time, held extensive hearings on competitive bidding and the record, I think, is very strong in establishing that competitive bidding, frankly, will not work in Legal Services.

Grants to private practitioners will tend to diminish and undermine the pro bono services that are currently being provided by private attorneys. Current staff models, we would strongly state, in fact, strongly encourages pro bono activities. The local staff programs, in fact, coordinate and facilitate the participation of the private bar in pro bono activities and I think that is something you need to be very much aware of. In the absence of that, we think that pro bono activities will diminish.

Competitive bidding, we feel, will erode the salaries and benefits that currently exist, that are already inadequate and meager in

Legal Services programs. It will also, particularly in programs that are organized, will diminish the effectiveness of local staff to bargain for terms and conditions of employment.

Competitive bidding will as it is being proposed, eliminate the procedural safeguards against arbitrary defunding of current programs and we frankly think that is simply going to lead to the politicizing of Legal Services. You are going to have essentially every disgruntled litigant who wants to get back at Legal Services advocating that local programs be defunded because of their effectiveness.

The union is also firmly opposed to the restrictions on migrant representation. We don't think that it makes any sense at all to even consider placing any restrictions on advocacy that can be provided to migrant workers. Migrant farm workers are the most exploited workers in this country and we think it is a farce to even consider such an approach.

We also have concerns about the history of monitoring in Legal Services and I want to point out that we are concerned about what we consider to be the excessive and burdensome demands on local programs. One particular point I want to make is that the privacy rights of employees of local programs have in the past been violated and, in fact, have been subject to litigation. We would strongly urge that language be included that would establish a standard when it comes to the privacy rights of employees and that perhaps the Federal Privacy Act should apply in this situation.

We also have some concerns about copayments that have been advocated from some quarters. Our concern is that copayments will lead to the interests of the very poor being put aside, so to speak, for the interests of those clients who can afford to pay some fees for their representation.

I should also say in closing that the union is also very much opposed to restrictions on voting rights, prohibitions on the collection of attorneys' fees and a number of other provisions that have been advocated by the reform movement as far as Legal Services is concerned.

Thank you.

Mr. FRANK. Thank you.

[The prepared statement of Mr. Loines follows:]

PREPARED STATEMENT OF DWIGHT LOINES, PRESIDENT, NATIONAL ORGANIZATION OF LEGAL SERVICES WORKERS, DISTRICT 65, UAW

My name is Dwight Loines and I am President of the National Organization of Legal Services Workers, a labor organization that represents employees of Legal Service programs in thirty states around the country. NOLSW's parent union UAW, has been a strong supporter of Legal Services since the inception of that program. In recent years the UAW has devoted considerable resources in opposing the McCollum-Stenholm bill, and expects to devote similar resources for the defeat its most recent incarnation.

Mr. Chairman, the concept of competitive bidding is a major component of the McCollum-Stenholm bill, and one of its most insidious provisions. As recently contemplated by LSC competitive bidding would lead to the dismantling of the current delivery system. It would be very expensive to operate and require a massive bureaucracy to administer. It would result in all major decisions being made in Washington by people who have no connection with local communities and their priorities. Local grantees would be plunged into incredible uncertainty that would undercut their sense of independence and make them more

susceptible to political pressures. Every disgruntled defendant in a law suit brought by a Legal Services program is going to pressure LSC bureaucrats to fund less vigorous grantees.

NOLSW/UAW believes that standards for the award of grants on a competitive basis will be difficult to develop and to implement rationally on a national basis. In fact the union believes that regardless of what standards might be articulated competitive bidding will result in undue emphasis being placed on cost over quality. LSC officials in Washington will not be able to discern qualitative differences between applicants, and funding decisions will turn primarily on cost. The experience with contracting in the criminal defense area on relative small scales clearly supports that conclusion.

In order to put themselves in the best competitive position, bidders are going to claim that they can do more for less money. Current grantees with long term experienced employees will have to cut the already meager salaries and benefits of those employees or place themselves at a competitive disadvantage. As

a result the quality of services to the poor will suffer as staff morale suffers and more experienced and dedicated practitioners leave the field. And ironically, in the long run, the cost will be even higher as contractors feel the impact of unrealistically low bids. Moreover, a large segment of the employees of grantees come from the local community and, in some cases, are often minorities. Those employees will lose their jobs and benefits and the delivery system will lose important links to the client community.

The staff attorney program is the heart of the contemporary delivery system and is the glue that holds it together. Unlike ten years ago, local Legal Services programs today receive supplemental funding from a variety of sources, both public and private, including Interest on Lawyers Trust Accounts (IOLTA) funds. Those funding sources have generally come into existence in recent years to supplement services provided by LSC grantees. The growth of those funds is a strong testimony to the fact that LSC grants have effectively leveraged other resources on behalf

of the poor. Funds from those sources would not likely be available to private practitioners. In fact a significant incentive to raising those funds, to assist struggling not-for-profit programs, will have disappeared if private practitioners successfully bid for contracts.

Staff attorney programs also work very closely with bar associations in operating pro bono programs. The staff program generally has an LSC funded pro bono unit that conducts initial interviews, prepares files, and provides referral services to the pro bono attorney. They also re-assign cases when necessary, prepare statistical reports, and engage in various promotional activities to attract additional participation by the private bar. Pro bono activity has clearly expanded dramatically in many parts of the country as a result of staff attorney programs working with local bar associations. The support and coordination provided by staff attorney programs are indispensable in maintaining the current level of pro bono activity in this country.

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Finally with respect to competitive bidding, the elimination of provisions of the LSC Act that provides for notice and a hearing, prior to defunding of grantees for cause, would be disastrous. Washington bureaucrats will be under tremendous pressure from disgruntled litigants to defund particular grantees precisely because of their effectiveness in representing the poor. Moreover, it is certainly not clear that the cycle of anti-Legal Services hysteria is at an end or that it won't resurrect itself in the near future. Given the nature of the program, and particularly its recent history, it would be ludicrous to eliminate this important safeguard. Moreover, under the current provisions of the LSC Act, the Corporation can defund an existing grantee when it determines that there is a more qualified applicant for the grant.

Restrictions on the ability of Legal Services attorneys and paralegals to provide representation to migrant workers, as proposed by McCollum-Stenholm, would deprive the most exploited workers in this country effective legal counsel. Such a result

would be an abomination. It is a total fabrication to say that the agricultural community in this country is somehow being victimized by migrant farmworkers and their Legal Services advocates. There has simply been no showing whatsoever that the laws, procedural safeguards, and professional standards that apply to all attorneys who file frivolous law suits are not adequate to guard against any potential abuse when Legal Services attorneys are involved. In fact NOLSW/UAW is not aware of any disciplinary action or penalty that has been imposed on any Legal Services attorney in connection with litigation concerning farmworkers.

Despite the concerns expressed by Congress over the years LSC monitors continue to make unreasonable and excessive demands for the production of documents. In addition to the fact that these document requests are often massive and place unreasonable burdens on local programs, the privacy rights of program employees are often violated. In fact a United States District Court Judge in Portland, Oregon, on October 6, 1989, in a law

suit brought by NOLSW/UAW (National Organization of Legal Services Workers v. Legal Services Corporation, CV No. 89-464-PA) held that LSC's demand for access to confidential personnel files of the employees of local grantees was not "reasonable or necessary" to its statutory duties, and that " ...the evidence that LSC has been hostile toward legal services programs is overwhelming". While LSC did issue a new grant condition in response to the court proceeding, it is inadequate and provides no safeguards against the misuse of employee information.

Consistent with LSC's duties and responsibilities under the LSC Act, the Corporation should be required to conduct its monitoring and compliance functions in a way that respects the privacy rights of the employees of local grantees, does not interfere with the duty of grantees and their employees to bargain in good faith, and does not have the effect of micro-managing local programs.

Prohibiting redistricting cases is a blatant attack on the rights of the poor to bring law suits under the Voting Rights Act

and the U.S. Constitution, to challenge political districts that illegally dilute their voting rights because of race. On the one hand many conservative groups argue that the judicial activist have championed the rights of racial and political minorities over majorities on matters that are best left to the political process. Now those same groups oppose the right of poor people to use federal law to insure a level playing field in the political process.

Timekeeping requirements as proposed by McCollum-Stenholm would impact negatively on the effectiveness of grantees. It would be extremely costly to implement, and would subject attorneys and paralegals, already overburdened with excessive caseloads, to additional burdens. Moreover, there is no practical reason to impose a system that requires contemporaneous recording of all time spent on cases or other matters. To the extent that time records might be needed to distinguish between the use of LSC and non-LSC funds a less extensive system might be appropriate.

McCollum-Stenholm proposals to restrict the use of any funds received by recipients will result in less funds being made available to provide services to the poor. Private funds, Interest on Lawyer Trust Accounts (IOLTA) funds and Non-LSC funds, including other public funds will be affected. The ability of state and local public agencies, as well as private donors, to address specific needs of the poor will be eliminated if those needs are found to be in conflict with the LSC Act.

The McCollum-Stenholm provision dealing with attorney fees, governing bodies, lobbying and rulemaking, authority of local boards, class actions, copayments, and theft and fraud, among others, are seriously flawed and should not be adopted as proposed.

Mr. FRANK. Mr. Londen.

STATEMENT OF JACK W. LONDEN, ON BEHALF OF THE AMERICAN BAR ASSOCIATION

Mr. LONDEN. Thank you. I am a private attorney in San Francisco. I am appearing on behalf of Jack Curtin, who is the president of the ABA. He is out of the country and cannot be here.

I am a member of the ABA Standing Committee on Legal Aid and Indigent Defendants. The ABA has provided support to the efforts of Congress and the Legal Services Corporation for many years. We welcome the statement of Mr. Martin, who, in his prepared remarks, emphasized that the fundamental objective should be expanded access to justice.

We take issue with some of the specifics in recent proposals which are attempts to expand access to justice through, at the best, improving the efficiency of means of providing services to the poor. However, as I want to emphasize with some specific examples, many of those attempts to improve efficiency are untried, novel and experimental. While they perhaps should be explored further, there is no reason to believe that overall they will improve access or expand access to justice.

I want to make specific reference to the area of migrant legal services because our standing committee has been preparing a white paper on legal services federally funded to migrant farm workers. We hope very shortly to issue our white paper. We have received many comments from program——

Mr. FRANK. Let's not describe it until we get it. We will read it when we get it.

Mr. LONDEN. Very well.

I would like to address a couple of the proposals that have been made in that context because, first, there is a question of whether there is a continuing need for specialized funding for migrant workers. That need is undeniable. The barriers to access to justice are particularly great for migrant workers: Cultural and language barriers, the fact that they move from season to season, from place to place, the dependency on labor contractors, their economic circumstances—all have not changed in a way that reduces the access to justice problems. The need for specialized funding continues.

Several ways have been suggested of improving the efficiency of service to the poor and to migrant workers. Those we find in our study do not bear out across-the-board change now. I will give you an example.

Alternative dispute resolution, mediation and arbitration may be very effective in reducing costs; however, it must be borne in mind that these are untried programs. They largely do not exist. We will be replacing an existing functioning program with something that has not been tried.

As a cost-saving measure, it must be borne in mind that the parties pay for mediation and arbitration. To assume that either the agricultural entities on one side of litigation or the Legal Services programs will be more efficient in terms of lower overall costs in dispute resolution is an untried hypothesis and it leaves out of the equation the fact that mediation must be paid for. Litigation is

paid for by the State and by the Government as to the costs of the court.

There is no reason to believe that ADR will lower in the short term, at least, the cost of dispute resolution.

The restrictions on solicitation for attorneys who will be serving the poor, and in particular, migrant workers, are in direct conflict with all of the needs for access that have led to special funding for migrants.

We have considered requirements such as a specialized affidavit or statement as a predicate for litigation or settlement negotiations. From our study, it appears that those requirements are as likely to increase the hurdles and the costs and the administrative and procedural difficulties in this litigation and ultimately increase costs as they are to reduce them. At least they should be studied and tried on a small scale before existing programs are disrupted and existing service is impaired. It is not consistent with the overall agreed consensual goal of expanded access to justice to impose those kinds of requirements.

The organized bar has, in large part, created the IOLTA funding, with the help of State legislatures. That has brought $100 million in funding to help and assist in the gap that is still left by inadequate levels of Federal funding. All of the testimony you have heard and all of the evidence is that the gap is getting wider, notwithstanding that there are 136,000 lawyers who are helping for free.

To impose on private funds and on IOLTA funds the same restrictions which apply to Federal Legal Services funds is not justified by any need to ensure that Federal funds are being misused. Existing accounting rules accomplish that goal.

On the other hand, imposing those restrictions may mean that funds that are available to help beneficiaries of—that the legislatures and the donors of those funds intend to help can't be so used. Again, it is inconsistent with the goal of expanding access.

I say, overall, that there are many assumptions in the past that there is a conflict, an us-against-them attitude and we welcome the attitude of Mr. Martin that we should get past that.

I want to give the example in the migrant area. The program in Minnesota, for the Red River Valley, has been so successful in serving the migrant workers there that it has been a boon and a service to the growers. Growers there actually do not—are able not to pay wages until the end of the season and one way they are able to do that is that the Legal Services program is so effective at obtaining emergency relief and public benefits on a schedule that makes it possible.

Most of the litigation undertaken by that program is not against growers. It is to benefit agricultural workers in their disputes with landlords; it is to get workers the public assistance to which they are entitled; and it is of mutual benefit to growers and to the farm workers.

I would like to call the subcommittee's attention, on the question of whether there is still a need for this special assistance, Secretary Dole's public announcement on her visit to a farm labor camp in Florida, and with the committee's permission, I would like the record to include it——

Mr. FRANK. Is there objection? The Chair hears none and it will be included.

[The article referred to follows:]

Visit to labor camp shocks Labor Secretary Dole

Shabby housing on farm labor camps may be hit by stricter enforcement

By KAREN BALL
AP Labor Writer

WASHINGTON — Labor Secretary Elizabeth Dole saw firsthand the rundown barracks and poor plumbing provided for men and women who work the fields when she made a surprise visit to a migrant farm labor camp in Florida.

So moved was she by the experience, Dole is weighing steps to boost enforcement of housing standards and wage laws applying to the estimated 1.5 million migrants who work in the United States.

Among the possibilities — targeted strike forces at labor camps on the East and West coasts and increased penalties for employers who violate housing and wage standards, sources said.

G. Wayne Culver, a department aide who accompanied Dole to the Zellwood farm camp in central Florida last May, recalls the conditions:

Toilets didn't work. There was no hot water, windows were broken, and workers made do without closets by draping their clothes over wires strung from wall to wall.

Even before the department puts final touches on the initiative, farm labor organizations say they're skeptical the administration will make much of a dent in the well-documented poor living conditions for migrants.

"I'm more than a little skeptical that this will ever happen (but) I would hope it's not just rhetoric that makes the front page for a week and goes away," said Mike Hancock, executive director of Farmworker Justice Fund Inc.

Business groups are leary of any plan that would impose stiff new restrictions on farmers, saying farmers already face burdensome regulations concerning pesticides, ground water and food safety.

"You have all of these economic pressures ... You're going to get to the point where it's just not economical to produce the crops in this country," said Libby Whitley, the American Farm Bureau Federation's assistant director of national affairs.

Officials within the Labor Department disagree over how far the initiative should go, according to sources who asked not to be identified.

"She's hearing voices telling her not to do this ... There are people who are concerned about the political implications. Enforcing farm labor regulations has never been a big item on the Republican agenda," said one department source familiar with the interagency negotiations on the issue.

Dole has not signed off on a plan yet but may make an announcement next week. The tentative strategy drafted by aides, at her request, suggests:

—Tougher enforcement, such as targeted strike forces on the East and West coasts and improved coordination among department agents.

—Increased civil fines for employers shirking wage and housing responsibilities or ignoring other laws. The department has not discussed specific dollar amounts, sources said.

—Changing housing standards to cover more workers and clarify who's responsible for migrant families' living conditions — the employer or the contractor who rounds up the workers and takes them from job to job.

—Reviewing changes in law, such as the elimination of the minimum wage exemption for agriculture. That also would require Congress' approval and within the Labor Department there "is not a groundswell" for pushing it, a source said.

—Trying to find a child care solution so workers' children don't have to tag along in the field — and even sometimes join in the harvesting — because they have nowhere else to go.

—Creating a cabinet-level commission to attack the problem. It would include the heads of the Labor, Education, Agriculture, Housing and Health and Human Services departments, along with the chief of the Environmental Protection Agency.

"The effort is not to just clamp down hard, raise penalties or whatever, but to try to see the world as it really is," said Dole Tate, a spokeswoman for Dole. "It's not a simple problem."

Associated Press story
July 30, 1990

Mr. LONDEN. And also to the GAO case study, which found after extensive investigation that there is no evidence of abusive practices which merit special protective procedures.

Mr. FRANK. We will reference the cite. There is no need to include it in the record to save printing costs because people can easily—if they can get the record of this, they can get the GAO report, but we will let the reference to that stand.

Mr. LONDEN. If we can include two excerpts from the report in the record, they are one page each.

Mr. FRANK. We will include those.

Mr. LONDEN. We will submit those.

Thank you.

Mr. FRANK. Thank you very much.

[The material referred to follows:]

EXCERPTS FROM GAO CASE STUDIES*

Case Study #1: "In our opinion, the grantee had a reasonable basis to pursue workers' claims against grower A for violations of AWPA [Agricultural Workers Protection Act] and FLSA [Fair Labor Standards Act]. Under both AWPA and FLSA, a grower may be legally responsible for violations of law committed by a crew leader...Apparently, grower A did not understand his potential liability for the crew leader's actions, which may have caused or contributed to his feeling that he was being harassed." (Page 60).

Case Study #2: "In our opinion, there was a legitimate dispute as to the number of mandays grower B used for purposes of determining whether he was exempt from the law...We found nothing improper or unreasonable in the attorney's actions about which grower B complained." (Page 63).

Case Study #3: "In our opinion, there was a reasonable basis for a claim against grower C... Concerning the grantee attorney's actions, we found nothing improper in his tactics." (Page 66).

Case Study #4: "The four grantee attorney practices to which grower D expressed opposition do not appear to be unfair or improper." (Page 71).

Case Study #5: "We offer no observations regarding these disputes because grower E recently sued the grantee for abuse of process, raising questions about these disputes for a court to address." (Page 81).

*GAO, Report to Congressional Requesters (Hon. Beverly Byron, Bill McCollum, Charles W. Stenholm and others), Grantee Attorneys' Handling of Migrant Farmworker Disputes With Growers, September 1990. According to the GAO, the cases were selected from growers "identified by congressional staff members, grower associations, and a search of LSC closed complaint files."

OTHER GAO FACTS*

1. GAO's review of LSC data showed grantees reported negotiated settlements with growers in about 80% of the 1,069 cases settled or decided in 1987 and in 87% of 1,343 cases in 1988. (Page 25).

2. GAO found no disciplinary actions by state bar associations against migrant legal service attorneys from the period 1985-1988 or Rule 11 orders by Federal Courts for filing frivolous law suits. The GAO contacted the state bar organizations to verify the information. (Page 28).

3. GAO found from LSC data no malpractice actions filed against grantee migrant attorneys. (Page 28).

4. GAO found in reviewing 19 complaints filed with the LSC against migrant programs that no evidence by LSC investigators substantiated any of the 19 complaints of alleged improper conduct by grantee attorneys. (Page 28).

*GAO, Report to Congressional Requestors (Hon. Beverly Byron, Hon. Bill McCollum, Hon. Charles Stenholm, and others), Grantee Attorneys' Handling of Migrant Farmworker Disputes With Growers, September 1990.

[The prepared statement of Mr. Londen follows:]

PREPARED STATEMENT OF JACK W. LONDEN, ON BEHALF OF THE AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

I am Jack Londen, a lawyer in private practice in San Francisco and a member of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. I appear today at the request of our President, John J. Curtin, Jr., who is out of the country and regrets that he is unable to be here himself.

First, I commend you, Mr. Chairman, and your Subcommittee for the leadership you have shown in fighting to preserve meaningful, comprehensive legal services for the poor in this country. Without this Subcommittee's vigilance in its oversight of the Corporation and its commitment to high quality, and effective legal representation, the report card on equal justice in this country would be a most unsatisfactory one.

That is not to say that we are at, or even close to, a satisfactory state of affairs with respect to meeting the legal needs of the poor.

An ABA study of legal needs of the general public in the mid-70s demonstrated that, even if minimum access were achieved, only 20% of the legal needs of poor people would be met.

Several states have conducted detailed surveys in recent years of the legal needs of the poor in those states, including Maryland, Massachusetts, New York, Illinois and Maine. According to these studies, the level of needs of the poor for which there was no legal assistance ranged from a low of 77% in Maine to a high of 86% in New York. In New York, this translates to nearly 3 million civil legal services matters annually. An Ohio study will be released later this month and will show, we understand, an 83% unmet need.

A recent pilot national civil legal needs survey of low income people the American Bar Association conducted showed there were 4.9 million civil legal problems of the poor in 1987 for which there was legal assistance and 19 million for which there was no legal assistance -- again an 80% unmet need.

The federal appropriation for the Corporation ten years ago was $321 million. Simply to have preserved those FY8I real dollars by adjusting for inflation over the intervening decade, the appropriation for FY91 would have to be over $500 million. But it is $327 million -- or only 65% of the real-dollar funding level ten years ago.

We have been fortunate that there were significant new non-federal resources which became available during the '80s. The IOLTA, or Interest on Lawyer Trust Account, programs that began in the early '80s now generate roughly $I00 million in revenue each year. Further, the organized bar has redoubled its efforts to provide pro bono legal services, and now more than 136,000 attorneys are enrolled in bar-sponsored pro bono programs.

But these infusions of resources have provided a safety net, not a panacea. They have helped file part of the gap created by the fall-off in federal funds over the last ten years. They have helped keep the unmet legal need of the poor from growing even larger, rather than helping to make any meaningful improvement in this historic problem.

But the problems are not only financial but policy-related. During the '80s, the primary issue was whether the Corporation would survive. That issue was resolved affirmatively and, mercifully, is now behind us. But as we head into the '90s, an issue of equal importance now squarely confronts us -- whether the poor in this country will have access to effective and comprehensive representation or will be permitted only a fraction of the justice available to others.

We believe strongly that "equal justice under the law", means what it says. It means that lawyers for the poor should -- indeed, must -- provide the full array of advocacy measures for the poor that those of us in private practice provide our clients. "Equal justice" does not mean partial justice, it does not mean sometimes justice, it does not mean "justice so long as you don't step on toes or offend powerful interests."

There are those who maintain that legal services programs should only provide help to individual clients with respect to so-called "day-to-day" legal problems. It is interesting to note that many of those taking this position were among those advocating the abolition of the Corporation in the '80s. In any event, we find ourselves squarely opposed to their positions. In fact, at our 1990 Annual Meeting last August, our House of Delegates unanimously adopted the following resolution:

> RESOLVED, that the American Bar Association opposes the passage of legislation, such as H.R. 5336, which would amend the Legal Services Corporation Act to:
>
> 1. Restrict legal services and pro bono programs in their use of IOLTA funds, state and local government monies and private contributions;

2. Authorize the Corporation to discipline program attorneys for violations of state ethical codes;

3. Place program attorneys and attorney board members in conflict with their ethical responsibilities by providing for board involvement in the selection of specific individual cases for representation;

4. Create obstacles applicable only to low income persons in obtaining representation and access to the courts, administrative agencies, and other forums for the resolution of their disputes;

5. Deprive the poor of lawyers to assert basic statutory and constitutional rights;

6. Dismantle the local control structure and destroy the effectiveness of the current legal services delivery system of staff and pro bono programs; and

7. Cause the unwarranted diversion of resources by requiring excessive recordkeeping and subjecting programs to claims by disgruntled defendants.

Over 100 state and local bar associations and foundations adopted similar resolutions last fall in opposition to these legislative proposals; a list of those bar groups is attached.

Let me discuss one area of particular concern to me -- proposed restrictions on representation of agricultural workers. My comments stem from the relevant provisions of the "Legal Services Reform Act of 1990" since at this writing there has not been any comparable legislation introduced this year. But the comments are, I believe, directly relevant to the overall concern expressed above.

The problems of access to justice are dramatic and severe for migrant farmworkers. In addition to the barriers faced by all of the poor, migrant farmworkers face the barriers of language and cultural differences, geographic isolation in remote migrant camps,

economic dependence upon agricultural contractors and employers, and constant transience to serve the needs of growers as the seasons change.

Because of these barriers, on top of the scarcity of legal services for the poor generally, migrant farmworkers continue to have serious and basic legal needs far beyond those met by existing legal services programs. My committee of the ABA is studying the most recent information on farmworkers' legal problems. This work confirms that migrant farmwork is still one of the least well-paid occupations in this country, with one of the highest rates of occupational injury; that migrant farmworkers and their families suffer from high rates of illness, including many illnesses related to pesticide exposure and nutritional deficiencies; and that, alone among American workers, migrant farmworkers occasionally are subject to debt peonage and even physical abuse, sometimes enforced by threats and violence. Living and working conditions remain far below the standards set by laws passed years ago. Last year, then-Labor Secretary Elizabeth Dole publicly decried the conditions in a farm labor camp she visited, and the failure of her own department to enforce the law.

There are laws already in existence that, if enforced, will remedy these problems. Congress and the states have passed comprehensive laws regulating the wages, terms and conditions of migrant farmwork, each of which recognizes the special vulnerabilities of the migrant population. Public benefit programs

exist to enable migrants and their families to supplement their diets and to survive the off-season -- and also to enable agricultural employers to have a large, seasonal labor force.

Many of these laws go unenforced because of insufficient resources for legal services. As Secretary Dole emphasized, the government has simply been unable to bring about effective compliance in some areas. Yet some of the amendments to the Legal Services Corporation Act that were proposed last year would, if implemented, worsen the situation by significantly reducing migrant access to legal services, funding for migrant legal services, and the effectiveness of those services.

Proponents of these amendments suggest that they are justified because migrant legal services providers are bringing frivolous and harassing claims against agricultural employers, resulting in high costs to growers to litigate these claims. But, as confirmed by a recent study by the General Accounting Office, the evidence does not support claims that migrant legal services providers are harassing agricultural employers. In the absence of such evidence the amendments are wasteful and premature, at best.

Moreover, there is no evidence that the proposed amendments will reduce litigation costs for agricultural employers. These amendments -- affecting areas as diverse as solicitation, pre-litigation negotiations, and pre-litigation documentation of claims -- are untried experiments that will introduce new procedural

issues in litigation, and may not have any significant benefits. In fact, because these amendments create novel and unclear procedural requirements, it is likely that they will increase the cost of litigation to both sides. We oppose these proposals to introduce new hurdles that must be jumped only if the clients are poor.

These amendments seem particularly short-sighted in light of the fact that many migrant legal services providers are able to work cooperatively with agricultural employers to achieve results that benefit all parties. Let me cite one example, drawn from the Red River Valley in Minnesota. We were told by both the chief lobbyist for the Minnesota Sugar Beet Growers that only by virtue of the effective representation of migrant farmworkers in state administrative agency proceedings provided by the Southern Minnesota Regional Legal Services program were benefits secured for the workers which assured there would be an economic supply of labor available to the growers. The Minnesota Sugar Beet Growers opposed last year's proposed amendments because of the cooperative, mutually beneficial relationship that has developed between growers there and legal services attorneys. This is only one of a number of examples of how an effective legal services program can benefit farmers and growers by serving the agricultural labor force.

There are five other proposals that I would also comment briefly on: competitive bidding, restrictions on private funding, attorneys fees restrictions, legislative redistricting, and administrative and legislative representation.

Competitive Bidding

There is no basis for concluding that competitive bidding would improve on the current approach to funding and providing civil legal services to the poor. In all likelihood, efficiency and cost, rather than quality of service, would become the most important criteria for rating a program. In the indigent criminal defense context, competitive bidding has generally proven to be problem-ridden and a failure. Studies of these attempts reveal that costs rose, quality of representation deteriorated and virtually every community abandoned the experiment as the basic delivery system.

Competitive bidding has not fared much better in the civil context. The limited experiments with competitive bidding by the Corporation in 1986 and 1987 demonstrated, from what we have been able to learn, that very similar problems occur.

The competitive bidding proposal also poses a grave threat to the continued success of the pro bono efforts of bar associations. Most pro bono activities are highly dependent on staff lawyer programs for intake, referrals, training and backup, without which they could not operate. Further, if this proposal resulted, as apparently intended, in paying private law firms to handle cases, it would discourage the law firm down the hall or up the street from performing similar services for free. Thus, implementation of this proposal will lead to a withering of pro bono work.

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We have previously supplied considerable information to this subcommittee on the problems that have arisen in the criminal and civil areas with respect to competitive bidding and I will not belabor them here. Suffice it to say that it is clear the competitive bidding proposals are a blatant attempt to dismantle the entire current delivery system for legal services for the poor -- a system of staffed legal services programs directed by boards controlled by bar associations, working in partnership with bar-sponsored pro bono programs. It is a system which, despite its gross underfunding, has served the poor, as well as the justice system, very well indeed.

Private Funding, IOLTA Funding

The budgetary shortfalls discussed above have given new urgency to the need for local programs to increase significantly the resources raised from sources other than the LSC. Funds have come from a variety of sources, including law firms; bar associations, individual lawyers, foundations, the United Way, and individual contributors.

These contributions are made most often to expand the types of legal assistance the local program provides and for purposes designated by the grantors. We are very troubled by the notion that the federal government would attempt to dictate to private individuals and groups how their charitable contributions are to be utilized. In addition, at a time when the unmet needs for services are so great, the ability of local boards to raise additional funds

to help meet the need should not be hampered by restrictions on fund usage. We therefore would strongly urge the removal of any and all restrictions on the uses which can be made of private funds.

Some recent proposals would extend restrictions to cover state and local government funds and IOLTA funds, and we strongly oppose these proposals as well. IOLTA deserves special mention. These proposals, in effect, would strip the state-designated governing board for the IOLTA program of its ability effectively to utilize its monies to provide important legal services not available through LSC funding. For example, many programs use IOLTA grants to serve the elderly or disabled who, while they do not meet LSC financial eligibility guidelines, may still not have sufficient resources to afford legal assistance. Financially eligible clients would find out they would not be able to receive representation in many areas. Again, there are many classes of aliens in this country legally who cannot be served by legal services programs using LSC funds but can and often are served by using IOLTA and other non-LSC funds. The public bodies that administer IOLTA funds are well suited to determining how those funds should be used. Those determinations should best be made in each state and not dictated from Washington.

Attorneys' Fees Restrictions

H.R. 5336 contained a highly one-sided provision on attorneys' fees. Given the drastic underfunding, there is no valid reason to bar legal services programs from receiving awards of attorneys' fees from private party opponents. Congress and state legislatures created fee statutes to fund cases on civil rights and other

violations, and also to deter the violators. It would benefit only the violators to make these statutes off-limits to the poor. It would be equally unjust to create a special exception to the American Rule -- that attorneys' fees are ordinarily not recoverable costs -- only to the detriment of the budgets of legal services programs.

Redistricting Matters

H.R. 5336 would have prohibited representation by legal services programs in certain types of cases regardless of the source of the funds used. This Association has long supported the principle, embodied in the existing Act, of local control of programs. Program governing boards should have the flexibility to use available funds to address the particular needs of their communities.

Section 2 of H.R. 5336 would have prohibited any program, whether staff or pro bono, which receives any LSC funds, from participating in any Voting Rights Act representation involving redistricting or in any representation involving the census. This prohibition would deny poor persons the opportunity to preserve fundamental civil rights under the constitution and one of this country's major civil rights acts. These cases are not partisan in nature. Rather, they are frequently based on the effective denial of the right to vote because of discrimination based on race -- cases involving, for example, county commissions with at-large districts resulting in no minority members despite their sizeable

population in the community. The makeup of local government is also important for the profound effect it can have on the lives of poor people through decisions on how resources and services are distributed. Few legal services programs have actually provided representation in redistricting matters; but when possible cases arise, local programs are best situated to determine whether they should be brought in the face of competing demands for services.

Administrative and Legislative Representation.

H.R. 5336 also would have stripped legal services lawyers of certain tools in achieving their clients' objectives. It would have prohibited representation of an eligible client in both administrative rulemaking proceedings and in legislative forums.

The poor are the segment of our society most heavily and directly subject to bureaucracy. A significant percentage of their legal problems arises from their extensive involvement with administrative agencies. Limiting their lawyers, access to participation in the agencies activities would deny them equal access to justice. It also often would result in expensive and time-consuming litigation which could be avoided. Prohibiting representation in the legislature would deny the poor what may be the only opportunity to resolve their problems and would deny legislators the opportunity to obtain information on the consequences to poor people of specific proposed and existing legislation. Legislative and administrative representation have long been formidable tools used by private attorneys to represent their clients; they should also be available to legal services clients and their lawyers.

Justice Learned Hand once stated, "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice." Let us make the guarantees of our democratic system of government -- that all people are equal under the law, that justice is dispensed without regard to wealth or social position -- a reality. Let us not ration justice but rather guarantee our poorest citizens access to vigorous and comprehensive legal representation.

BAR ASSOCIATIONS AND FOUNDATIONS
OPPOSING H.R. 9336

ALABAMA

Mobile Bar Association

ARIZONA

State Bar of Arizona
Arizona Bar Foundation
Maricopa County Bar Association

ARKANSAS

Arkansas Bar Association
Pulaski County Bar Association

CALIFORNIA

State Bar of California
Long Beach Bar Association
Sacramento County Bar Association
Los Angeles County Bar
Association

COLORADO

Colorado Bar Association
Denver Bar Association
Legal Aid Foundation of Colorado

CONNECTICUT

Connecticut Bar Association
Connecticut Bar Foundation

DELAWARE

Delaware Bar Association

FLORIDA

The Florida Bar
The Legal Aid Society of the
Orange County Bar Association

GEORGIA

State Bar of Georgia
Atlanta Bar Association

HAWAII

Hawaii State Bar Association
Hawaii State Bar Association -
Young Lawyers Division

ILLINOIS

Illinois State Bar Association
Lawyers Trust Fund of Illinois
Winnebago County Bar Association
DuPage County Bar Association

INDIANA

Indiana State Bar Association

KANSAS

Kansas Bar Association

LOUISIANA

Lafayette Parish Bar Association
Southwest Louisiana Bar Association

MAINE

Maine State Bar Association
Maine Bar Foundation

MARYLAND

Maryland State Bar Association
Maryland Legal Services Corporation

MASSACHUSETTS

Massachusetts Bar Association
Boston Bar Association

MICHIGAN

State Bar of Michigan
Washtenaw County Bar Association

MINNESOTA

Minnesota State Bar Association

MISSISSIPPI

Mississippi State Bar

MISSOURI

The Missouri Bar
Kansas City Metropolitan Bar
Association
Bar Association of Metropolitan
St. Louis
Missouri Lawyer Trust Account
Foundation

MONTANA

State Bar of Montana

NEBRASKA

Omaha Bar Association

NEVADA

State Bar of Nevada
Washoe County Bar Association

NEW HAMPSHIRE

New Hampshire Bar Association

NEW JERSEY

Hudson County Bar Association
Middlesex County Bar Association

NEW MEXICO

State Bar of New Mexico

NEW YORK

New York State Bar Association
Bar Association of Nassau County
Bar Association of Erie County
Dutchess County Bar Association
Oneida County Bar Association
IOLTA Fund of the State of New York
New York County Lawyers Association

NORTH CAROLINA

North Carolina Bar Association
Mecklenburg County Bar Association
North Carolina State Bar Plan
for IOLTA

NORTH DAKOTA

State Bar Association of North Dakota

OHIO

Ohio State Bar Association
Cincinnati Bar Association
Toledo Bar Association
Columbus Bar Association

OKLAHOMA

Oklahoma Bar Association
Oklahoma County Bar Association
Tulsa County Bar Association

OREGON

Oregon State Bar
Marion County Bar Association

PENNSYLVANIA

Pennsylvania Bar Association
Allegheny County Bar Association
Philadelphia Bar Association
Dauphin County Bar Association
Pennsylvania Lawyer Trust Account
Board
Bucks County Bar Association

RHODE ISLAND

Rhode Island Bar Association

TENNESSEE

Tennessee Bar Association
Nashville Bar Association
Jackson-Madison County Bar
Association

TEXAS

State Bar of Texas
Texas Young Lawyers Association
Dallas Bar Association

VERMONT

Vermont Bar Association

VIRGINIA

Virginia State Bar
Virginia Bar Association
Virginia Law Foundation
Virginia Trial Lawyers Association
Norfolk and Portsmouth Bar
Association

WASHINGTON

Seattle-King County Bar Association
Asian Bar Association of Washington
Spokane County Bar Association

WEST VIRGINIA

West Virginia State Bar

WISCONSIN

State Bar of Wisconsin

PUERTO RICO

Puerto Rico Bar Association

DISTRICT OF COLUMBIA

Bar Association of the District
of Columbia
District of Columbia Bar-Section
on Criminal Law and Individual
Rights
Washington Council of Lawyers

NATIONWIDE

American Bar Association
National Association of
Pro Bono Coordinators
National Association of Bar
Foundations
National Association of IOLTA
Programs

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Mr. FRANK. I am in substantial agreement and grateful to all of you for this. I would say that with regard to the duality of the funding sources, I am in favor of allowing the non-Federal funding sources essentially to be used for the purposes the donors intend, but I point out to all concerned that to the extent that we do that, to the extent that we have several funding sources, or two for these purposes, a Federal one and a non-Federal one, and some of the purposes for which the non-Federal funds can be used are not purposes for which Federal funds can be used, then accounting becomes very important.

It is not analogous to a private firm because, as long as the activities are certifiably legitimate under the public rubric, there is no need for a breakdown by client name, exact amount of minutes, et cetera. Some of the purposes for which you bill in the private sector, for which you record in the private sector, which is to bill, are not relevant.

So we are going to insist, I hope, on an accounting system which says you are going to have to account for the time of those working so that we can make sure that Federal money is not used to pay for nonfederally approved purposes.

I ask people to begin to think now about an accounting system and it is probably less than you have in a private firm and more than the Legal Services grantees want to do, but if they want to preserve the right to use private funds for nonfederally approved purposes, they are going to have to do that.

Mr. Gekas.

Mr. GEKAS. I thank the Chair.

The composite of the three testimonies that we heard here is one of opposition to any and all restrictions of any type except, perhaps, the one that is inherent in the original purpose, namely, the funding of the Legal Services system. All these proposals have come up in the last couple of years to try to put perceived reins on the activities and all that. There is unanimous opposition.

In effect, you are saying, have the Federal Government keep out of the business of the local Legal Services entities. I would like to hire all of you on my conservative agenda in the Republican Party to advance the cause of noninterference by the Federal Government in local affairs. You have been a great spokesmen for that.

[Laughter.]

Mr. GEKAS. I think you would make great consultants for it.

The point is that I hear nothing on how we are, as a Congress, to keep a handle on this. Are we supposed to simply appropriate and then never be present again in the workings of the Legal Services? I don't mean to make an extreme case out of this, but it seems that your testimony is extreme. You don't want any restrictions, not on solicitation and agriculture, not on—I haven't heard direct opposition on timekeeping—no restrictions on competitive bidding and other ideas of trying to put a public handle on public expenditures for a public program.

I appreciate the advocacy you have in favor of Legal Services, but I suppose, then, we are going to be left—if we follow your direction, the only constraint we will have is the level of funding.

Any comments?

Mr. McCALPIN. I think that there are several things. First of all, nobody is advocating that there be any change in the restriction against the use of these funds in criminal matters. Representation in the criminal justice system is something entirely different, sixth amendment and the like, so that I think to that extent, nobody is arguing that it ought to be free and open with freedom at the local level to decide whatever they want to do.

But, beyond that, I think that if the Congress is going to control the purse strings in terms of the dollars which will be appropriated, and if the aspiration is that people who cannot afford legal services be put on the same footing with those who can afford legal services, then it seems to me that the restrictions ought to be minimal because there are no restrictions on what a person who can pay for legal services can buy and if lawyers——

Mr. GEKAS. Yes, but isn't that, then, a mandate to the locals, given the fiscal restraints, to so prioritize, to so allocate time and resources to make sure that the poor person who needs that one-on-one advocacy has a priority over perhaps a class action on some legislative or political proposal that would not have as direct a benefit on a poor person who needs a divorce badly to get out of a battery situation or needs sustenance for his or her children, that kind of thing?

That is important to me.

Mr. McCALPIN. I agree with you when you said that it is absolutely fundamentally important for the local program to prioritize, to determine what is the best use of the limited resources in the local community; but I think I disagree with you if you say that it is more important that one person get a divorce than that 1,000 persons have access to welfare benefits through a class action. Indeed, a class action is the most conservative, economical and efficient way to utilize those resources to get benefits to people over multiple representation in repetitive litigation.

Mr. GEKAS. But you still leave that one disenchanted poor person out in the cold, perhaps.

Mr. McCALPIN. You do as long as the Congress doesn't appropriate enough money to take care of them.

Mr. GEKAS. I am just as quick to blame the local entity for not prioritizing.

Mr. McCALPIN. But they did prioritize and said that welfare is more important than divorce.

Mr. GEKAS. That is you opinion. That is your opinion.

Mr. LOINES. I would just emphasize that you should appreciate that priority-setting is a local phenomena, so therefore, if the local community has decided, through a fairly extensive process that the individual divorce case is more important than something else, regardless of my opinion, or anybody in this room's opinion, that is going to be responsive to the local situation and these local boards of directors are very representative. I mean, this was designed so that, frankly, people sitting here in Washington would not be dictating and saying that perhaps class actions should be emphasized over an individual case.

The point is that this is determined locally.

Mr. GEKAS. Yes, but—I understand it and you understand the realities better than I do. They are unelected, 1,000 percent unelect-

ed, and the kind of responsiveness that you are talking about is still programmed by the individual program, the individual agendas of the people serving, who are well-intentioned, I am not saying that, but what I want to try to glean from your testimony and to throw back at you is that we have serious problems with the trust of the American public in some segments of the Legal Services Corporation. We are trying to blend in the best with all those concerned.

I have no further questions.

Mr. FRANK. Mr. Ramstad. Go ahead.

Mr. RAMSTAD. Thank you, Mr. Chairman.

Your testimony with respect to competitive bidding constituted less than a glowing endorsement. I would just like, as a new member on this committee—was wondering if you could explain in a little more detail why and how competition would impact adversely on the ultimate recipient, mainly, the indigent person.

Mr. MCCALPIN. I think the best way to do that is to point you to the example of competitive bidding for representation in indigent criminal defense work. There are many instances around the country where contracts have been let to individual lawyers or law firms to provide public defender services. Universally, they have been a disaster. What happens is they come in with low-ball bids; they either come back and ask for more money, which destroys the economics, or they shortcut the representation. No motions, no depositions, no preparation, go in and do it on a mass basis. It is a very inferior service.

The fact of the matter is that all across the country, the movement is away from competitive bidding for indigent criminal defense. There are at least two or three examples of that on the civil side. One is Columbus, OH; another one is the so-called voucher study which has not been successful. As a matter of fact, the Corporation a few years ago let contracts on that kind of a basis in three or four places around the country—Jacksonville, FL, for divorces and someplace in the Middle West. We have tried to get the results of those experiments by the Corporation and they won't release them. We can only speculate it is because they are bad news.

Mr. RAMSTAD. Isn't your argument more one for quality control than against competition? I had experience for 5 years as a criminal justice lawyer and I can't disagree universally with what you are saying in your judgment, but I know in Minnesota, where my experience is, we have—it is sometimes the best and the brightest who come in with their pro bono spirit and—not literally pro bono, but in terms of competitive bidding, and many fine lawyers, and much good representation has resulted.

Mr. LONDEN. If I could address your comment, Congressman, there isn't on the criminal side, helping indigent criminal defendants, the same level of pro bono activity as there is on the civil side and we think that that may reflect the fact that on the criminal side, private lawyers are paid as conflict counsel or through these competitive bidding contracts to do that work.

Our well-founded fear, we think, is that this 136,000 lawyers who are doing this for free might be deterred from doing that if their peers are being paid to do the same cases. Let us at least have some confidence from experience that that is not the case before

we embark wholesale on a legislative requirement that would undo programs that are working.

Mr. RAMSTAD. Thank you, Mr. Chairman.

Mr. FRANK. Thank you. We are going to go vote. When we return, I will be a little late. Mr. Gekas will begin as we hear from Ms. Filoxsian and Ms. Spano. We appreciate your coming. We are sorry but votes happen, even when they are not about anything, as this one is, so the committee will be in recess and we are very appreciative of the testimony of these witnesses.

[Recess.]

Mr. GEKAS [presiding]. This hearing will reconvene with the panel of witnesses composed of, for the record, Migrant and Immigrant Assistance Center, Hazel Filoxsian, who is the executive director; and the Alternative Dispute Resolution System, represented by Joanne Spano, who is the coordinator of that entity.

You may proceed in any fashion you desire.

STATEMENT OF HAZEL FILOXSIAN, EXECUTIVE DIRECTOR, MIGRANT AND IMMIGRANT ASSISTANCE CENTER

Ms. FILOXSIAN. Thank you, Mr. Chairman.

I am not appearing as director of the Migrant and Immigrant Assistance Center. I am a farm worker. I am a former migrant worker and I am a present seasonal agriculture worker. I still work in the fields and it is in that capacity that I am here today, as a farm worker.

I do want to thank you for this opportunity. So many times, these meetings are held to determine what is best for farm workers and farm workers are not there to give any input about how they feel or about the issue that is being discussed.

Right now, what I am feeling is a little confusing. On my ride in here, I got to pass the Supreme Court, and I saw written across the Supreme Court "Equal Justice for All." But I couldn't believe it. I really couldn't believe it. I remember only once in my life feeling this singled out for discrimination and that was during the time there were signs all over this country that said, "White Only," and "Colored Enter Through the Rear."

If what is true is written on that Supreme Court building, "Equal Justice for All," then I must not be a part of that as a farm worker. I don't feel that imposing restrictions on attorneys that are going to represent me because I cannot afford the ambulance-chasers is giving me equal justice. I feel like this country owes it to me.

For 36 of my 41 years, I have crawled along the grounds in this country; I have climbed the trees; I have harvested the fruits and vegetables that you enjoy. When I say "you," I don't mean you individually, I mean the citizens of this country.

All we have gotten for it in the past is the absolute worse housing. Thirty-three Hispanic men paying $35 a week apiece for sleeping space on the ground. An outdoor toilet was constructed by the landlord. They had to shower with the water hose. Legal Services was there and worked for us to correct the situation.

In 1984, I was on a labor camp in Wilson, NC. I was held there against my will. I was forced into sexual slavery. Had it not been for the outreach of the Legal Services attorneys, I would never

have known I could have gotten away. For the first 3 weeks on this labor camp, we weren't allowed to work. Any female who was remotely attractive was kept on the camp as a prize to the male who earned the most money that week.

But fortunately for me, Legal Services came out to the labor camp; they let us know where the local offices were; they gave us free fishing licenses so that we could fish and get food because we weren't able to work. They also helped us to get food vouchers and they told me what my rights were.

You don't have to stay. You don't have to stay. You have the right to fair representation, thus allowing me to leave, on my own. I was not coerced into leaving, nor was I coerced into applying to Legal Services for assistance. They came at me more as a human being than as an attorney.

In 1956, on a labor camp in Belle Glade, I was repeatedly raped by a contractor and the grower was informed of this contractor's action. Then there was no one. Now, there is Legal Services, and because there is the Legal Services Corporation, that is what keeps us going as farm workers because we know that when we are exploited by the growers, when moneys are illegally deducted from our pay, we have fair representation.

I brought this along to show you. This is a new one. The old one is completely worn. This holds 90 pounds of fruit and from 1967 until about 2 weeks ago, for 5 days a week, I strapped this on my shoulder and I climbed to the top of trees that sometimes reached 40 feet in height, on ladders with rungs missing, in trees that the years time have decayed the limbs, risking life and limb to fill this bag and take it to a bin carrying 90 pounds of fruit. You know how much I get for this once it is full? Sixty-five cents.

In order to earn $6.50, I have to carry 990 pounds of fruit to fill one bin, and before deductions, I am only given 65 cents, but Legal Services guarantees that I am going to get it now. In the past, I had no guarantees.

If the landlords that house us in the absolute most horrible conditions you can imagine, if I go to Legal Services with a tenant/landlord dispute, these landlords are notified, first of all, of the violations. It is not—no one is encouraged, OK, let's sue. The landlords are notified of the violations and are given ample time to make repairs.

I can do that now. Before, I couldn't do it. I had to submit to some of the worse conditions in this country.

It leaves me feeling exploited because I have contributed so much to this country. I am a hard-working, taxpaying citizen of the United States of America, and it owes me something. The Legal Services Corporation was the first installment on what this country owes me, their representation without restrictions.

I feel so discriminated against because I don't think that the Bar Association is going to impose restrictions on every attorney it graduates. So why me?

Our labor laws—our children are dying in the groves. It reaches the grower's attention. His reaction, "It's a regrettable situation and we deeply regret that such an accident occurred, but we don't feel there was anything we could have done to prevent it."

You could not have violated the child labor laws. The boy was 15, working in the grove during school hours. Enforcement of the laws that we already have to protect us is what is direly needed. There would be no lawsuits against the growers. This one would not have faced a lawsuit. He could not make the Sanchez kid go to school, but he could have kept him out of his grove. He can't tell the parents, "You have to send your child to school," but we can tell them, "I'm sorry, it is against child labor laws for him to work in these groves during school hours and it is against the labor laws for him to work in a dangerous area or environment."

The pesticide poisoning—even in your own local paper this morning, issues on pesticides. Personally, I have been poisoned by pesticides. You can't see it because of the makeup. I have been in the fields and planes would come down so low you could almost reach out and touch them, spraying sulfa and other chemicals. Mixed with the perspiration, the heat, my pores are open and it completely destroyed my face.

I should have some recourse. There were no warning signs posted as to what chemical was being used, when it was applied, when mothers went into fields during their first trimester of pregnancy, working in the fields under those pesticides and then giving birth to deformed babies.

It doesn't sound like fair representation to me when the attorney that sits beside me in a court of law can only go so far in my behalf. When so many rules are imposed upon him that he is not really working in my best interest, he is not giving me fair representation. I want an attorney that I can have complete confidence in his competency.

There are no attorneys as versed in farm worker law as the attorneys for the Legal Services Corporation. We have been turned down by worker's comp attorneys who are supposed to know the laws simply because they have no idea about laws concerning farm workers.

The Legal Services Corporation works, and from looking at you, I know you are old enough to have heard the expression, if it is not broken, don't fix it. It works and it works to the benefit of farm workers. It works in our best interests. A group of people who have worked so hard—if you did a survey today, you would find that less than 40 percent of the welfare recipients are farm workers. They are not in the food stamp lines. They are on the buses and the vans, harvesting the food that sets these tables in this country.

These are hard-working people, honest people, and because we are doing the work that nobody else wants to do, we are thought of as subhuman. I am here to tell you that is not true. We hurt. We bleed, and we want what is promised to us, what is our right.

The fields in this country killed my mother, crippled my father and now they are taking its toll on me, but I continue to work in the fields. It is honest work and I continue to have faith in a system that has promised me my rights and have so far delivered.

If these restrictions are placed on the attorneys that we have been going to for so many years for representation, the Legal Services Corporation that has represented migrant farm workers, you are going to destroy that system, that democracy that we so believe in, that we have fought for. It is confusing, it is confusing to me. It

seems like you are promising me one thing and handing me another.

[The prepared statement of Ms. Filoxsian follows:]

TESTIMONY OF HAZEL FILOXSIAN
EXECUTIVE DIRECTOR, MIGRANT AND IMMIGRANT ASSISTANCE CENTER
BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
MARCH 13, 1991

Thank you Mr. Chairman and members of the Committee for this opportunity to appear before you today and discuss the provisions contained in the McCollum/Stenholm authorization bill which directly affect farmworkers.

The Migrant and Immigrant Assistance Center is a non-profit farmworker advocacy organization concerned about the living and working conditions of farmworker. I am appearing before you today both on behalf of my organization and on behalf of the Farmworker Justice Fund, who assisted in the preparation of this written statement.

I was raised in a farmworker family and I still work as a farmworker in Florida, picking beans and corn in Belle Glade. I know first hand the terrible conditions farmworkers live and work under and I also know firsthand the tremendous beneficial impact the migrant legal services lawyers have had in improving the lives of farmworkers. I am here to urge you to stand up for the rights of farmworkers and resist those who have sought to limit those rights by denying farmworkers access to legal services lawyers and the judicial system.

We are disturbed by the restrictions on farmworker rights contained in the proposed McCollum/Stenholm reauthorization bill and supported by some in the agricultural industry. While we are

not a Legal Services funded organization and would be unaffected by these restrictions, the migrant legal services programs targeted by these amendments are central to assuring farmworkers receive the protections granted them by law. The McCollum/Stenholm agricultural provisions would fundamentally change the protections afforded farmworkers under federal law and we are unalterably opposed to creating second class justice for farmworkers.

The primary farmworker protection statute, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), was negotiated by Congress and the Department of Labor with the active participation and support of agricultural organizations and farmworker representatives. As stated by then Representative John Erlenborn, ranking minority member of the House Education and Labor Committee when AWPA was enacted, "all interested parties, agricultural employers, representatives of migrant workers, and the AFL-CIO reached a consensus in support of this bill...With this bill, the parties most affected agree that their problems have been solved." 128 Congressional Record 26,008 (1982).

Now, however, some agricultural employer organizations want to limit the ability of farmworkers to assert their rights under AWPA by placing restrictions on legal services lawyers who invariably represent farmworkers in such cases. The right of farmworkers to sue AWPA violators and the obligation of farmworkers to negotiate prior to filing a lawsuit were critical, central provisions of the Act. Because migrants are usually poor an because the Act does not award attorney fees to successful plaintiffs, farmworkers have

nowhere to turn but legal services to obtain vindication for their rights.

Many of the same organizations that helped negotiate AWPA are now trying to place onerous prelitigation procedural requirements on farmworkers represented by legal services attorneys. Instead of taking their concerns about AWPA to the migrant legal services program, farmworker advocates or the appropriate Congressional committees with jurisdiction, the agricultural organizations are seeking restrictions through the back door.

The McCollum/Stenholm provisions would require farmworkers represented by legal services lawyers to meet prelitigation requirements virtually no other litigant must bear: sign an affidavit verifying the factual basis of the suit--though virtually no other litigant must so plead; deny farmworkers access to legal services attorneys by restricting those attorneys' ability to do outreach and community education. The legal services programs serving migrant farmworkers are already overburdened; these restrictions simply add new costs with no assurance that disputes will be fairly resolved.

The stated justification for these amendments is that agricultural employers are subjected to frivolous and vexatious lawsuits. The record tells quite a different story. The overwhelming majority of complaints have been resolved without filing a lawsuit, but when litigation was necessary, farmworkers have prevailed in over 90% of the cases. In no instance has a court reduced an award to a farmworker because a farmworker failed

to attempt a negotiated settlement prior to filing suit, as AWPA allows. Rule 11 sanctions, while available to compensate parties who have been subject to frivolous lawsuits, have rarely been imposed against a farmworker litigant or legal services attorney for frivolous or abusive litigation. Such a record does not support the proposition that farmworker cases should be restricted because legal services lawyers have misused the law.

Perhaps the most compelling vindication of migrant farmworkers attorneys is found in the recently concluded GAO investigation and report. GAO, Report to Congressional Requesters, Legal Services Corporation, Grantee Attorneys' Handling of Migrant Farmworker Disputes With Growers, September 1990. The report in no uncertain terms vindicates the conduct of migrant legal services and also offers damning evidence of the agricultural employer outrageous allegations against migrant attorneys which the GAO found to be baseless. The GAO findings comport with the admission of the American Farm Bureau Federation's chief lobbyist, Elizabeth Whitley, who last year stated that the Farm Bureau had been unable to produce evidence of migrant attorney abuses necessary to support these restrictions.

No compelling case has been offered to justify a dramatic change in farmworker protections carefully crafted to serve the interests of agricultural employers and farmworkers alike. Even if such a case exists, the Congressional committees with proper jurisdiction, not a LSC authorization bill, is the proper place to discuss these issues. This trojan horse assault on farmworkers'

rights should be turned back at the gate.

Perhaps as troubling as the disingenuous use of an LSC bill is the failure of the agricultural industry to attempt to resolve these problems with the farmworker advocates who represent migrant farmworkers' interests. Neither the agricultural employer groups nor the LSC staff have asked farmworker advocates to discuss their concerns. Instead, they chose the confrontational approach without attempts at compromise.

We in the farmworker community have as much interest as they in seeing that any unreasonable and vexatious litigation is stopped. If offered the proof of such activity, appropriate steps will undoubtedly be taken to prevent its recurrence. But we have not been offered that opportunity by the proponents of farmworker restrictions. When pressed for concrete facts to support their allegations, they fall mute.

For the vast majority of agriculture, there is nothing to fear from legal services lawyers because they are good, honest employers. The restrictions on legal services representation of farmworkers would protect only the minority of agricultural employers who violate the law. AWPA has served the interests of law-abiding growers and farmworkers alike.

I trust you will reject the disingenuous use of a LSC bill to amend the protections afforded farmworkers by AWPA.

Mr. GEKAS. We thank you for the eloquent points that you have made and your testimony will be duly noted and considered when we proceed with the evaluation of the bills in front of us. You have really pointed out some wideranging problems that go beyond even the scope of this committee, but because we are also members of other committees and Members of the Congress as a whole, we will benefit from the totality of your testimony beyond the issue here today.

So we thank you.

Ms. FILOXSIAN. Thank you for the opportunity.

Mr. GEKAS. We now will hear from Ms. Spano.

STATEMENT OF JOANNE SPANO, COORDINATOR, ALTERNATIVE DISPUTE RESOLUTION SYSTEM

Ms. SPANO. Hello, I would like to thank Congressman Staggers for inviting me. I am very honored to be here.

I am an assistant professor with West Virginia University. I have been working this past year on an Alternative Dispute Resolution System. I am funded half through labor studies and half through ag extension. The bulk of my experience, about 15, 16 years, has been in labor studies and not agriculture. I am learning a lot about agriculture as I go along, and I am more experienced in union grievance procedures and this is pretty different.

It is true what the man said earlier from the bar association that these Alternative Dispute Resolution Systems are of an untried nature, but the first thing I did when I was asked to go in and see what we could work out was talk to the Legal Services attorney. He was——

Mr. GEKAS. What was that? I didn't hear that?

Ms. SPANO. I talked to the Legal Services attorney right away, a man named Garry Geffert, because the growers were really complaining about him a lot, so I felt he was a logical place to start. I asked if he would be interested in some kind of mediation, a system where these problems could be resolved more quickly, and I found him to be a very dedicated, very competent attorney who believed very deeply in this cause and he didn't feel that it benefited the workers to wait for several years if they had a claim.

The lawsuits, which you heard from growers in the eastern panhandle of West Virginia before—created a real atmosphere of animosity. I mean, people are really angry about the lawsuits and I felt that had to filter down to the work force also, affecting the labor/management relations there.

The growers have a lot of other concerns to worry about with the weather and pests and everything else. They live in dread of getting something in the mail from Legal Services, so we have had a series of meetings and seminars. We have an advisory committee, and all along, we have involved spokesmen for the growers and the Legal Services attorney. I think an important part of any dispute system is education and communications. Many of our growers are small—I guess you would call them mom-and-pop operations. They only use a lawyer for specific purposes. They are not very specialized in personnel relations. They often tend to do things the way the father and grandfather before them did them.

So some of our classes have been just on personnel, on supervising people, on things like cultural differences. We had a man come down from Pennsylvania named Rafael Ramos, who spoke to some of the problems that happen when you have people with language differences and a different cultural background. The growers said they got a lot out of those seminars.

Also, some of the problems here are communications, of people not understanding the Legal Services system. The growers would complain that Legal Services doesn't want to negotiate, that they just want to run to court and sock them with a big claim. In Legal Services, the attorney would say, "Well, it's in my demand letter. I say call me if you want to talk about this," but the growers were seeing these demand letters—and I think that is an unfortunate name for them—they were seeing the demand letters as ultimatums. They would say, "Come up with so many thousands of dollars in 10 days, make out the check to us, we will get it to the guy, call me if you have any questions."

I don't think they are seeing the letters as an offer to negotiate and we have tried to get the growers to understand not to take all this personally. They get really insulted as if they are defending the whole family name when someone has a claim that might rather be technical.

For example, some of the lawsuits have been under the West Virginia Wage Payment and Collection Act. You have to have notarized signed statements for everything you are going to assign from the wages that is not a deduction, such as taxes. So growers who didn't do this would get fines which include 30 days pay and you might be going back for 3 years for a whole crew of workers reimbursing them for food that they did eat and giving each of them 30 days' pay. So, say, over 3 years—you are paying them for 3 months of work, so there is a lot of resentment there.

A logical way to handle that is to make sure that at least from now on, everyone knows what the West Virginia Wage Payment and Collection Act demands.

We have had growers who say I want to do the right thing. Just somebody tell me what I am supposed to do. They have even asked the Legal Services attorney if he can come out and make sure they are in compliance, but that is not his role. I have tried to explain he is not there to be an ombudsman and he said he represents the employees. It would be a conflict if he went around OKing whatever it is that the grower is doing, but one thing we can do for advice is to have a seminar, have him speak in general to some of the problem areas.

Last week at a seminar that we entitled, "Planning for Positive Results," he brought copies—well, he had me make copies of the West Virginia Wage Payment and Collection Act—the forms that have to be notarized, and he also talked to some of the conflicting regulations from different agencies.

There really is a problem with this overlap and we have had growers being fined over the I-9 forms. If you have a crew that has identification as to who they are, but they don't have the cards saying they are working here legally, they may say, "Well, the crew leader made off with them," or "They got stolen" or, "I know my number and the expiration date, but I don't have the card."

We have had growers fined for hiring people who didn't have their cards, but we also had a speaker from the Department of Justice who just last week said, "Well, you can't demand to see the card. If they know the number and expiration date, that's enough." You are opening yourself up for immigration-related employment discrimination charges.

If the workers turn out to be illegal, you can be fined. If they were here legally and their paperwork did get stolen, then you can be sued. Each I-9 violation is $1,000, so if you have hired 20 people, that is $20,000 right away, and all you wanted was somebody to pick your apples.

We are trying to get them to understand that this isn't personal. I have been told I have gotten people in rooms to talk who never thought they would be working together.

But what I want to talk about today is the issue of should these procedures be mandatory. Now, I am not a lawyer and I wouldn't feel comfortable if Legal Services' hands were tied and people who had really legitimate legal cases that should be pursued in the courts were told to mediate them with me first.

In my testimony, I used the example——

Mr. GEKAS. You say, you would be uncomfortable or would not be?

Ms. SPANO. No, I would be uncomfortable. For example, I used in my statement, what if it was the end of the season and the workers felt the crew leader was pocketing the tax money and Social Security money? Now, that is a big legal problem. I am not there to mediate it and say how about giving back 50 cents on the dollar. Something legal should be done there.

A mediator doesn't have the power to demand that somebody not leave the area or to demand that somebody turn over records or money. The whole thing is supposed to be conciliatory.

I would like to be able to handle problems that perhaps shouldn't belong in court. Sometimes these things are personality disputes or one crew charging favoritism or a crew wants an electric stove instead of a gas stove. I mean, these shouldn't all be in the courts anyway.

I would like to try to help people mediate cases so that they don't take several years. One case that was decided in 1988 was from the 1980 growing season, so it does take quite awhile. But I would feel uncomfortable if I was the only recourse to the workers because, like I said, I am not a lawyer and one thing Legal Services does is investigate the whole range of charges that might be available.

I don't really have that authority and I don't have the training to investigate things like where did the tax money actually go?

Another issue is representation. We have had people say, "Well, can't we just leave Legal Services out of the system," and you are supposed to have a farm worker come in with the grower and just talk about it. Well, growers have access to their attorneys, even if they don't bring the attorney into the hearing. They might come in with about six different reasons why they don't feel they owe any money to this person and then on the other side of it, you have a farm worker who is supposed to represent himself or herself. That might not be very fair, either.

The Alternative Dispute Resolution System that we came up, and I would like to leave a copy, says that the workers can have a representative at any time. They can pull out and decide they want to go to court. The first step of our system, which we are encouraging, is for the worker to talk to the grower. Sometimes that might happen, and other times, it won't. A lot of times the workers want to get the season done and make sure they get home before they bring charges.

The second step is for a mediator to talk it over and it could be with a representative. If the worker is already gone, Legal Services can represent that person.

Binding arbitration would only be used if both parties agreed to it. Some of the laws say that farm workers can't give up their statutory rights to remedies. The West Virginia Wage Payment and Collection Act says that. The Migrant and Seasonal Agricultural Workers Protection Act says that also, so we left arbitration in there in case it is appropriate. Somebody might be fired, might be trying to get his job back. There are different circumstances. You want somebody to just say take him back or you were justified in firing him, whatever.

But I don't really want to limit the farm workers in what kind of representation or what kind of advice they can have. I sympathize with the growers. There is a lot of education to do. Some of these laws that they are upset about, I say, well, you have lobbyists, work on changing them, because they are very punitive.

In the rest of labor law, the idea is for the worker to be made whole when there is a problem. So if somebody is saying he should have gotten a certain position through seniority and his background and he didn't get it, an arbitrator would perhaps say the person should have the job and the pay difference in the few weeks or whatever it has taken and not $500 damages or 30 days' pay.

It is the punitive aspect of it that multiplies a lot of these cases out. But Legal Services has been contending that they didn't write the laws that way.

So, in summary, I would just like to say that I am trying to understand both sides here. I don't think we have any bad people in the process. I think we have a very competent attorney who believes very much in the people he is representing. We have growers who have a lot of problems now in the fruit industry who are very concerned with being hit with lawsuits for tens of thousands or hundreds of thousands of dollars when they thought they were good people who were trying to do the right thing.

Our funding is through West Virginia University. I am not sure all universities would be willing to take this up, but it is a way to get some expertise out there without having it be very expensive.

Mr. GEKAS. We thank you.

[The prepared statement of Ms. Spano follows:]

STATEMENTS FOR THE HOUSE JUDICIARY SUBCOMMITTEE
ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS
REGARDING LEGAL SERVICES CORPORATION REAUTHORIZATION

March 13, 1991

Mr. Chairman, and members of the Committee, it is an honor for me to be here today. My name ie Joanne Spano, and I am an aseistant professor at West Virginia University. I am working in the Eaatern Panhandle of Weet Virginia on an alternative dispute reeolution system (ADRS) in agriculture. I am submitting a copy of the ADRS we have developed with input from local growers and Legal Services.

Congreeeman Staggers' staff has helped us get the two aides together to talk, and hie interest probably encouraged WVU to fund us. I've been asked to tell you about our work and the role of Legal Services.

Two questions that have been raieed are: (1) Should Legal Services be compelled to exhaust local dispute reeolution procedures before it can take a case to court? and (2) Should Legal Services be reetricted in being able to represent farmworkere in those procedures?

You know where these queetions come from. This Committee hae heard teetimony before from fruit and vegetable growere in our area complaining about Legal Servicee lawsuits. The law suits have been concentrated among growers who use the H-2A program to bring in off-shore pickers. Growers who have had to pay large judgements are under-standably very emotional about it, and most of them are in another seriee of lawsuits now. The Legal Servicee attorney they have to face is competent, aggreseive, and tenacioue. Growers reeent that their tax dollars are funding lawsuite against them.

Just the fear of lawsuits affecte growers who have never been eued, and who seem to have good labor relations. One orchard manager etopped paying a bonus to his pickere becauee two of them - who kept bruising over the acceptable percentage of fruit - started grumbling. He said he was afraid of being eued, and having to explain to a judge five yeare later exactly hov one defined a bruised peach. Others say they are afraid to enforce disciplinary policies, such as those against drinking, for fear the discharged worker will file suit with the help of Legal Services. They feel they have no control over their own pereonnel practices.

Growere complain that keeping up with federal and atate lawe is complicated, that overlapping agencies can give contradictory opinions. They get especially angry when their practicee are approved by a government agency, and they are sued by Legal Servicee anyway. When they acknowledge that they made some mietakes, they resent the fines multiplied out for each worker, timee several yeare, plus interest and both sides' legal fees.

We are dealing with some of the problem now. We had seminars in the eummer, and juet held a two-day seminar last week entitled "Planning for Positive Results". We brought in representatives from the Department of Labor, Department of Juetice, Legal Services, and the Inetitute for Safety and Health Training to WVU's Experiment Farm in Kearneyeville. We had a panel of growers giving advice. We brought in a grower ombudsman named Rafael Ramos from Pennsylvania, and a Farm

Bureau staff member named Bill Aiken to give advice in personnel practices. I used a training film and materials from the Farm Bureau. We even had a panel on community services that are available for farmworkers.

Some of the problems have been in communications. The Legal Services attorney, Garry Geffert, says that his demand letters are an offer to negotiate, and he suggests in the letter that they call him to talk about the claims. The growers were viewing the demand letters as see-you-in-court ultimatums that would only open the door to more charges. The first thing they would do is call their attorney. If they unintentionally violated the law, they think that settling the claim is admitting their guilt, so they say they want their "day in court" to clear themselves. They take the charges very personally, as an affront to them and perhaps the whole family. So they appeal, and the higher they go, the more expensive it gets.

So what alternatives are there to court, and how strongly should Legal Services be steered there? Garry Geffert has expressed little confidence in the Jamaican liaisons who are supposed to be used for the H-2A workers. The Job Service has a grievance procedure, but it only applies to growers who used the Job Service to get workers. If a grower found his or her own crew leader contacts, neither would be an appropriate forum for dispute resolution. Legal Services has said it will only cooperate in a procedure that is appropriate for the claims, and that promises confidentiality and no retaliation.

Our ADRS is new, so I can't promise it will work. It depends on the commitment of everyone involved. We have a pretty broad definition of a grievance, so it can be used for just about anything. It is risky to demand that it be used, especially staffed by a non-lawyer like myself. If workers call and say the crew leader has been pocketing their social security and tax deductions, and it is the end of the season, should I just try to mediate it? I can't demand that the crew leader not leave the area. The workers may want to make sure they get a ride home with him before charges are filed. It's possible they are mistaken as to what is being done with the money. I don't have the power to subpoena the crew leader and his records. I could notify the appropriate government agency, but it may be that Legal Services is a logical choice to take the workers' testimony and keep in touch with them.

A mediator is supposed to be conciliatory, to help people lessen their differences until they find a solution they can live with. A mediator doesn't have the power to order people to do things, but can offer alternatives and a different perspective. It should be voluntary, with both sides feeling that someone cares about their opinions and their reasons for being there. I think Legal Services will use the system if the attorney has confidence the workers will be treated in a fair manner. I don't want to tie anyone's hands if a legal claim develops that is not suitable for mediation.

The second part has to do with representation. I have heard "It's too bad we can't keep Legal Services out of mediation" and "These people never even knew their rights until Legal Services told them". Legal representation is not necessary in mediation, but I would hesitate to proceed in a system that limited legal access to those who could afford it. Even if a grower came without an attorney, he could have spent a lot of time with one to prepare his arguments. The inequity of this is especially obvious in light of the low educational levels,

langusge bsrriers, and cultural differences between farmvorkers and their employers.

To help explsin my views on representation, perhaps I should back up and explain that my current position is a hybrid one - funding is half from Labor Studies and half from Ag Extension. I have been involved in labor studies snd the labor movement since the mid '70s. The Director for WVU's Inetitute for Labor Studies, Dr. John Remington, vas my professor back then, and is my boss now. He ie also an arbitrator. When he told me about the legal quagmire in the Eastern Panhandle, we automsticslly thought that s grievance procedure with mediation and srbitrstion could be helpful. We've seen it work many times to settle probleme quickly, without going to court.

There are important differences, though. In moet grievsnce procedures, a shop steward or union official is sufficient representation for the worker, with lswyers perhsps used for arbitration, but not always. Both sides have a contract that they bsrgained over, so they know where to look for reference for most disagreements. Labor lsvs (that explicitly exclude sgricultural workers) encourage collective bsrgsining snd using internsl remedies for disputes. The system takes training, communications, snd a good faith effort, but it pays off in thst disputes are settled all over the country without work stoppages or lawyers.

Agricultural workers, on the other hand, don't hsve comprehensive contracts that they have tsken psrt in. They don't have trained repreeentatives looking out for them. By lav, they are informed of the basics - pay scale, type of crop, who pays for vhst, etc. It might not be the grover who is making them unhappy; it may be s crev leader or a supervisor. The grover says, "Why didn't they just tell me sbout it?" I've known skilled professionals who didn't want to complain to the boss, and when they did, they were retaliated against, so I don't expect farmvorkers to be more courageous. That's vhy ve brought down Rafael Ramos, to explain how cultural differences affect communicstions.

When lsbor problems creste lswsuits thst take yesrs to settle and they cauee so much animosity, it is a dysfunctional system. You've heard the growers' complaints, and the pickers don't like vsiting for several years to see if they sre going to vin anything. You don't solve the problems of sn industry by cutting back on one side's rights. We never considered excluding Legal Services from the process, figuring that if he could offer his clients a quicker vay to get it over with, Garry Geffert would participate. It was actually his ides thst ve put on seminars to train the growers. He's been on panels to point out the problem sreas in the lav. He serves on our Advisory Committee and has put in ss much time as snyone in trying to get our ADRS off the ground.

We have a core of grovers vorking to help the ADRS, but I vish ve hsd more. The President of the West Virginia Horticulture Society, Ron Slonaker, serves on the Advisory Committee and helps with the seminars. Bill Aiken sent sway to sll the ststes for their fsrm labor manuals to help me get one together for West Virginia. Tupper Dorsey from Moore snd Dorsey, and J.M. Scott from National Fruit served on s psnel snd give me feedback. A grover who is working on her MBA might do s project with me, a survey of dispute resolution procedures sround the country. The stsff at the Experiment Fsrm hss been grest at getting the vord out

to the growere, especially Dr. Tara Baugher from WVU's College of Agriculture and Forestry, who is on our Advisory Committee.

This coming harvest season, we'll see how much the sgricultural community wants to support dispute resolution. By the time ve got our ADRS approved by everybody it was late September, and the harvest was well underway. Only three growers filled out the bsck psge and sent it in, and one ie retired. There is no charge for signing up, or using mediation. I do ssk that I be allowed to do a brief orientstion, so the workere know about the ADRS. We have had between 20 snd 35 people st our orgsnizational meetings snd seminars, but I think they are sdopting a wait-and-see attitude.

It is going to take a lot of education and personsl contact to counteract all the mistrust that hss been generated. For example, our growers were pretty much in the dark as to the West Virginis Wsge Psyment snd Collection Act, the bssis of seversl lawsuits. Gsrry Geffert explained what an assignment of vages is, told them of the 25% limit that can be taken out of the workers' pay, provided the text of the lsw, and gave out the type of forms that need to be notarized before assignmente can be made. Violations csrry a penalty of paying 30 dsys' vages to each worker, eo they hsve a real incentive to comply. Unfortunstely, it took a group of growers being csught in noncompliance to hsve it brought to everyone'e sttention. Instead of blaming Legal Service's actions on s personsl vendetta, or intentions of putting growers out of business, s more conetructive approach is to check your payroll procedures.

I would like to lesve you with a little anecdote from one of our oldest growers, a msn who hss paid quite a bit in fines, and fought Legal Service access to his workers. He told me after our seminsr last week that he brought his son over to Gsrry Geffert to introduce him. After saying "I don't think you've met my son", Mr. Geffert reminded him that he had, because the son ran him off the orchard a few years back. The grower lsughed and said, "I told him that was in the old dsys". I really felt that they'll be sble to get off to a new stsrt.

ALTERNATIVE DISPUTE RESOLUTION SYSTEM
BETWEEN AGRICULTURAL EMPLOYERS AND FARMWORKERS
September 26, 1990

The following document establishes an Alternative Dispute Resolution System (ADRS) to assist in the resolution of employment-related disputes between farmworkers and West Virginia agricultural employers. It is designed to encourage both informal and formal resolutions through a grievance procedure that includes negotiation, mediation, and arbitration, and to discourage resolution through the courts. It also provides for education regarding legal responsibilities and positive personnel practices in the slow season. It is based on the following assumptions:

1) It is in the mutual interest of both growers and farmworkers to resolve employment disputes locally in a speedy and inexpensive manner;

2) No one will be compelled to use the ADRS or all of its steps. However, once the employee and grower agree to arbitretion, each will be asked to sign a written statement waiving their right to go to court over the same complaint. Arbitration will be final and binding on both parties. *[See NOTE]*

ADMINISTRATION

The ADRS will be administered by the West Virginia University Extension Service, specifically the Cooperative Extension - Agricultural Substation, Kearneysville and the Institute for Industrial and Labor Relations (IILR), Morgantown. The administrative office shall be at the WVU Experimental Farm, Kearneysville, West Virginia.

Administrative policies and procedures will be determined by an Administrative Committee composed of one representative from Cooperative Extension - Agriculture, one from IILR, one employer/grower representative to be appointed by the West Virginia Horticulture Society, and one representative of farmworkers to be appointed from the public by the Associate Provost for Extension of West Virginia University.

An interim Administrative Committee composed of the following individuals shall serve until a permanent committee is appointed:

Dr. Tara Baugher, College of Agriculture and Forestry/Coop. Ext.
Mr. Garry Geffert, Attorney (Public/Farmworker)
Dr. John Remington, College of Business and Economics (IILR)
Mr. Ron Slonaker, West Virginia State Horticultural Society

PARTICIPATION

Any West Virginia agricultural employer, grower, farmer, or crew leader may elect to participate in the program by sending a letter to the ADRS office stating his/her intent to use the ADRS and abide by its policies. Any participating employer may, upon giving thirty (30) days notice in writing, withdraw from participation in the ADRS. The Coordinator will maintain a roster of participating employers.

[NOTE: The West Virginia Legal Services Plan, Inc. (WVLSP) is of the opinion that arbitration of claims under certain farm labor laws cannot be final and binding and that arbitration of many types of disputes involving farmworker protective statutes is inappropriate.]

Any farmworker/employee of a participating employer may elect to use the ADRS or request information. Participating employers shall advise employees of the existence of the ADRS through any convenient means including, but not limited to: meetings, addenda to employment contracts, posted notices, etc. Participating employers shall allow their employees full and free access to the ADRS Coordinator and/or representatives of the West Virginia Legal Services Plan, Inc. (WVLSP) at reasonable times and places.

Participation in the ADRS shall not be construed to create any liabilities not otherwise provided by law.

A participating employer must, as a condition of participation, agree that no worker will be punished or be barred from future employment on account of filing and/or pursuing a grievance. The status quo of the worker will be maintained during negotiations and mediation, including permission to live in the camp. Such permission can be denied if there is the likelihood of physical harm or property damage.

A participating employer must, as a condition of participation, agree that representatives of WVLSP will be allowed to meet and talk with workers at the employer's labor camp at times which do not interfere with work, without interference, oversight, or inquiry by the employer, supervisor, crew leader, or other agent of the employer.

Employers and employees agree to keep grievances and settlements confidential, including the identity of the grievant, except as needed to discuss with Counsel, the Coordinator, or an Arbitrator.

Any allegation that a worker was discriminated against for using this procedure should be reported to the ADRS Coordinator.

ADRS GRIEVANCE PROCEDURE

PURPOSE:

The purpose of this grievance procedure is to promote the timely, informal, on-site resolution of grievances in West Virginia agriculture. It encourages negotiation and mediation between the parties most directly involved in worksite problems. It provides for binding arbitration if agreed to by the parties of the dispute. *[See NOTE, p.1]*

DEFINITION OF A GRIEVANCE;

A grievance is any disagreement or complaint regarding wages, hours, employment terms, working conditions, housing conditions where housing is provided by the employer, or charges of unfair treatment.

Grievances can take place between workers, or between workers and employers. Both workers and employers may file grievances.

DEFINITION OF AN EMPLOYER:

Employers, for the purposes of this grievance procedure, include orchard/farm owners, managers, other supervisory personnel, and crew leaders.

DEFINITION OF A FARMWORKER:

A farmworker can include local residents, migrants, and foreign (H2A) workers who are employed part-time or full-time, seasonal or year-round in West Virginia agriculture.

DEFINITION OF ADRS COORDINATOR:

The Coordinator is a neutral administrator employed through West Virginia University's Extension Service, Institute for Labor Studies, with an office at the WVU Experiment Farm, Route 9, Kearneysville.

Tha Coordinator is not an arbitrator or judge, but is empowered to: assist both sides with information on how to usa the system, assist with the filling out of forms, bring both sidas together in an attempt to mediate grievances, provide information from other agencies, refer either side to legal counsel, set up arbitration hearings, and keep confidential records of cases handled.

STEPS IN THE GRIEVANCE PROCEDURE:

STEP 1. Workers are encouraged to bring any work-related or housing-related grievances directly to tha employer. This step is informal and requires no written record.

Recognizing that some workers may be reluctant to speak up for themselves, or may not speak English fluently, a grievant may ask another worker or a translator to come with him/her to the employer, or to speak for him/her.

A grievant may also contact the Coordinator for information about his/her rights under the ADRS, or an attorney for legal advice. The Coordinator may refer the worker to the WVLSP so the worker may obtain information concerning his/her rights under the law.

If the problem is not resolved to the grievant's satisfaction, he/she may file a verbal or written request with the Coordinator to go to Step 2 within five (5) working days of the attempt to informally resolve the matter. This request may also be made by a representative of the grievant.

STEP 2. The Coordinator will assist the parties in their attempts to reach a mutually satisfactory resolution of the grievanca. Sessions will be informal and may include both parties or only one party. The worker may be present or have a rapresentative speak for him or har. Tha Coordinator may discuss the grievance with either party, or their repraaentatives, over the telephone. All records of tha Coordinator will be confidential.

The parties may attempt mediation aven if a lawsuit has already been filed. If agreement is reached, the parties will execute mutual releases of claims.

If tha grievance is not resolved, tha griavant may, within ten (10) daya of filing at Step 2, ask that the matter be advanced to Step 3, arbitration. At this point, tha grievant will be required to fill out a written grievance form, and can ask for assistance.

All grievances not advanced in accordance with the time limits set forth shall be deemed abandoned and resolved in favor of the responding party, except as extended by mutual agreement.

The mediation phase will be ragarded as settlement negotiations so that offers of settlement made during mediation cannot be used as evidence of liability or validity of a claim.

The parties to a mediation agree that neither party will subpoena or otherwise request tha Coordinator or Mediator to testify in any litigation over the complaint involved in mediation.

STEP 3. All grievances not resolved through the preceeding Steps 1 and 2 may, upon agreement of all parties, be submitted to final and binding arbitration bafora a nautral Arbitrator selected from a panel of IILR professors. Tha partias may reprasent themselves or choose a reprasentative. No stenographic record of the proceedings shall be mada. The means of paying the fea and axpense of tha Arbitrator shall be arrangad by the Administrative Committee.

The Arbitrator may, at the requast of both partias, issue a bench

decision at the close of the hearing, and he or she shall render a written decision within ten (10) days of the hearing which shall be final and binding on both parties. Nothing herein shall be construed to limit the rights of the parties to seek to enforce or vacate any arbitration award through a court of competent jurisdiction. *[See NOTE, p.1]*

JOB DESCRIPTION FOR COORDINATOR

The Coordinator will be responsible for: keeping regular hours at the WVU Experimental Farm; publicizing the dispute resolution system; traveling to orchards and migrant camps to do outreach and check for problems; conducting orientation sessions to explain the grievance procedure; acting as a mediator for Step 2 grievances; assisting anyone who needs help in filling out the grievance form; compiling human resource materials for those on the mailing list; planning and teaching in seminars and short courses in the off-season; keeping records of grievances, including final awards from arbitrations; referring cases to the appropriate agencies when necessary; and making quarterly reports outlining activities, successes, and any problems with the system.

TRAINING

While the ADRS should provide a speedy and inexpensive means of resolving disputes, it is recognized that improved human resource practices together with greater knowledge of relevant employment laws and federal regulations will lead to a reduction in the number of disputes between employees and employers.

Accordingly, the IILR will offer training and continuing education programs to all interested persons in West Virginia's Eastern Panhandle between January and June, 1991. These programs will cover such topics as:

-Farm Human Resource Management
-Personnel Practices
-Labor and Employment Law
-USDOL Rules and Regulations
-Dispute Resolution Techniques
-Human Relations
-Effective Supervision

Registration fees collected from these programs will be used to defray the costs of the training and of the ADRS as will funds provided by the West Virginia Horticulture Society.

ALTERNATIVE DISPUTE RESOLUTION SYSTEM PARTICIPATION FORM

(Signing and sending in this form puts you on the roster and makas tha systam available to you. Even after you sign up, you are not compellad to bring any particular problems to the ADRS for settlament. Once you and your employaes use the ADRS, both partias are expected to use it in good faith and abide by the policies and conditions stated in the attached proposal.)

I have read the attached "Alternative Dispute Rasolution Systam Betwaen Agricultural Employers and Workers" and want to be included on the roster as a participant. I agrea to abide by its policies and conditions when I use the system.

I will inform my employees that there is a grievance procedura and mediator available if they have any work-related problems.

I understand that I can call or write to the ADRS administrative office if I have any questions, need mora copies, or want someona to explain the procedure to my employees.

_____

(signed)

_____

Name printed

_____

Name of orchard or farm

_____

Address

_____

Town, State, and Zip Coda

_____

Phone number

_____

Date

Sand to:
Wast Virginia University
Expariment Farm - ADRS
P.O. Box 609
Kearneysville, WV 25430
(304) 876-6353

ATTN: Joanna Spano

Mr. GEKAS. Are you saying that the primary funding stream for your system comes from the university?

Ms. SPANO. Yes. At our seminar last week, we charged $40 for 2 days, but a lot of that was food and to pay for bringing in speakers and things. There is just a small fee for seminars and there was a——

Mr. GEKAS. Paid for by whom?

Ms. SPANO. The growers. Now, we also had a free workshop on occupational safety and health on the workers' right to know and we said they could bring the workers for free and we had about 35 people at that.

Some of the growers grumbled about the $40, but that is about half an hour or less of their attorney's time, so they thought maybe it would be a worthwhile investment. I said, if you can head off one demand letter, it is worthwhile, and I did have some expenses.

Our growers were very excited by the ombudsman I brought down from Pennsylvania, Rafael Ramos. We have been talking about doing things like orientations and having your policies written out and he does orientations in Spanish and he explains to the workers what the rules of the camp are, if there are no firearms or alcohol or women—whatever the rules are, and what is expected of them, and he goes around and sees if they have any problems.

Sometimes there is a real barrier there. Workers will be upset about things. They grumble, but they don't tell the grower. Sometimes they will just pack up and go down the road to the next person.

For example, there are workers who think that anything that is taken out of their pay is just skimmed off the top and they didn't understand about things like taxes and they thought the grower was keeping the money himself, because maybe where they came from, they were used to people, like the crew leader, skimming off money.

We have told growers, "Pay the workers directly. Don't give thousands of dollars to the crew leader and figure he's going to do it." We have been trying to give them as many pointers as we can about how to check on crew leaders, what are the numbers you can call to see if this person has charges against him in another State, how to check on things like insurance if he has been paying it out.

One grower said, "I just took over the insurance myself in the grove. It cost me 15 percent of what it would have cost him." He says it was worth it to just not worry about it any more.

We talked about housing. We had a panel on community services, on literacy, if people need emergency food stamps, if they need health care and we do have a group of growers that I consider very progressive. They are trying to recognize the rights of the farm workers. They are trying to do the right thing. They are going to meet with this man, Rafael, to have him come down and do some work for them in Spanish.

We don't have anybody who speaks Creole, that is one problem, but I think they want to do the right thing and I don't think I pointed out the real core of the lawsuits have been over the H2A program of the offshore workers brought in and that does put growers under more regulations. They have been very angry about that and some of them have just opted out of the program, and

then they have to depend on getting domestic workers, which is very iffy. You can hook up with a good crew or you could have such a turnover or people who don't really know how to pick your fruit—you can end up with a bunch of bruised peaches or apples that nobody wants to buy.

That is why one panel we had was on ideas for recruiting and keeping workers. We had growers who hadn't been sued in the last 10 years, so we thought that was successful and they gave pointers on how to accommodate farm workers, how to be flexible in management, how to help them with their other needs.

Mr. GEKAS. We thank you for your testimony. The subcommittee, as I said to the previous witness, will be considering the full range of the concerns that you have outlined and I personally—this doesn't bind anybody—think there is a good role to be played by the alternative remedies that such a system would provide.

So whatever value that has, it may find its way into this legislation or some other agency's way of helping to resolve some of these problems.

I turn back the gavel to the chairman.

Mr. FRANK. I thank you, Mr. Gekas. Yes, Ms. Filoxsian.

Ms. FILOXSIAN. I wanted to point out one thing, Mr. Chairman, thank you.

On the issue she raised about the growers not knowing the laws regarding farm workers. In every State, practically, in this country and every city in that State, there is an office of the department of labor and their compliance officers are charged with overseeing the hiring, paying and housing of farm workers, so here, again, I think it really applies that ignorance is no excuse. Ignorance of the law is no excuse because the compliance officers—it is their job and not the job of the attorneys of the Legal Services Corporation.

The problem with that is there are only 16 compliance officers to oversee the work of maybe 5,000 or 6,000 contractors who work for growers and that is a problem with the enforcement. The only hope that farm workers have in the area of enforcement is being fairly represented in a court of law when these laws are broken.

Mr. GEKAS. We thank you.

Mr. FRANK. Let me ask just one question, being a little late. You said, as I have read your written testimony, I think, you thought this had to be voluntary. Is that in the mediation process an alternative dispute?

Ms. SPANO. I was saying when you were gone, there may be issues that really should go to court. Sometimes when you make someone mediate something where they are not going to get a fair solution—and I talked about how I don't have the authority to issue injunctions about things and demand people's records and stuff.

Mr. FRANK. Thank you. I don't mean to be duplicative and I appreciate that.

Ms. SPANO. OK.

Mr. FRANK. Thank you, both, very much. I have no questions, having missed the testimony.

We will now hear from our colleague, Mr. McCollum, whom I am told is here.

STATEMENT OF HON. BILL McCOLLUM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. McCOLLUM. Thank you very much, Mr. Chairman. I appreciate your giving me the opportunity today to come over and talk about the subject that is dear to the hearts of Congressman Stenholm and me. We have spent a lot of time with this in the past.

I don't have a written statement to present. I would just like to bring the chairman and the subcommittee up to date on what we have recently done. Charlie Stenholm and I have spent a lot of time in the off months since the last Congress was in session working with various interest groups that had been critics of ours with respect to a proposal we made last year. We have listened to the Bar Association. We have listened to some of the folks on the Legal Services Corporation Board who had some disagreements and concerns with us. We have listened to various interest groups who have made constructive suggestions to improve the suggestions and products that we had and last week, we introduced a bill that is numbered H.R. 1345, which is simply, from our standpoint, a blueprint. Hopefully it will be helpful to your subcommittee in working through the process of marking up and doing an authorization bill.

I would like to point out the things that are significantly different, where we radically changed the approach that we had suggested in the last Congress. I think perhaps we have addressed some of the concerns that I was listening to this morning that one or two of your witnesses have had with respect to the product we proposed last time.

One of the most significant areas of change was in the area of the procedures with regard to handling cases involving agricultural interests. It is my judgment and that of Mr. Stenholm that we erred, perhaps, in suggesting that there be a unique provision in the law dealing just with agriculture or any type or any form of litigation and, rather than having something apply strictly to agricultural interests and concerns, the new proposal we have is neutral. It would apply every provision equally to all of the various possible defendants and parties to any actions involving Legal Services attorneys and disputes.

What we have done is to strip out the administrative hoops that were in the original proposal dealing with agricultural issues so that there would be no requirement for mediation or for going through alternative dispute settlements or exhausting administrative remedies.

What we do propose, though, is that in the case of any litigation, that there be a clear requirement that all of the parties, all of the plaintiffs be named, that there be a statement put in the record that is a predicate signed by whomever the plaintiffs are that these are, indeed, the facts upon which the case is to be brought and that there be an accountability to the Legal Services Corporation throughout the process.

I think that is a very significant part and component of any reform that you might engage in in terms of the Legal Services Corporation.

We have also listened to concerns about our solicitation provisions. We do come back with a suggestion to you that you adopt, in

terms of what applies to Legal Services lawyers, the American Bar Association solicitation requirements. We understand that there are quite a number of States that do not require restrictions on solicitations for pro bono work, pro bono attorneys, but it is our feeling that when you have government-deep pocket involved in this situation, like you do with Legal Services lawyers, that the traditional rules against solicitation should apply to the Legal Services' lawyers, just as they would apply to the average attorney who has a paying client supporting him.

That does not mean we would restrict in any way the powers of Legal Services lawyers to go out and make themselves available to the migrant workers or any other group, and to give talks about their availability and to post notices of their availability and do all of those things. In fact, we think that that is a very appropriate process and there is some language in what we would propose to encourage that to be done.

One of the other significant areas where we have changed the proposal from what we offered last year is in the fact that we have totally deleted any kind of restriction, any kind of disciplinary involvement on the part of the Legal Services Corporation of individual Legal Services attorneys. The bar associations, I think rightfully, complained that that was taking away their traditional prerogatives, and consequently, we have removed that from our proposal. We think all the disciplinary matter should be left up to the State and local bar associations.

As far as local governing boards of the individual grantees are concerned, there are some changes in our suggestions this time around with respect to that as well. We think that there should be priorities set by the governing boards as to the type of cases which the Legal Services lawyers take. We think the lawyers should be given some guidance because there is a limited amount of resources that are available. Those resources can be directed more and channeled more if the local boards will simply take a role in suggesting priorities in terms of the general involvement of the attorneys. But the idea of any case-by-case review is a problem, apparently, with some ethical considerations that some of the members of the bar have raised, and consequently, we don't think that that type of restraint and power given to the local board is appropriate.

So those are some of the changes that we have made that are, I think, significant. I hope that the committee will have a chance to review the various proposals that we have made before the time of markup of a bill. We think very strongly that the restrictions on redistricting are appropriate. We have not changed that in any way. The theft and fraud provisions that I think the chairman was going to put in his bill, in any event, would be appropriate. We think that competition is the heart of any reform. We need to have the opportunity for the Legal Services Corporation National Board to be able to have a chance to find another grantee that might compete and do the job better.

We think that lobbying and rulemaking is not an area where Legal Services lawyers ought to be involved. They ought to confine their activities to representing the poor with the limited resources they have—whether it is in agriculture-related matters, landlord-

tenant problems or whatever involving basic legal issues—rather than getting into efforts to change the laws themselves.

We also think that timekeeping is exceedingly important for accountability, and my impression is that the bar associations now support that concept, as well as some of the others that we have in this proposal.

We have receded considerably from what we had proposed with regard to public housing. Now all we do is suggest what you put in your bill last year in the markup process for eviction in cases where there are drug questions. We would also like to point out to the chairman and the subcommittee that in our review of this matter, we came across the fact that the IG for the Legal Services Corporation has done an extensive amount of study in this area. After we had decided to recede on this point, he had the occasion to explain to us a lot of information that might make one want to do a modified version of this provision rather than perhaps what we proposed or what is in the committee version of last Congress.

Last, I want to bring up one of the things that I think is very important, and that is that there will be, I think, a continuing dispute among reasonable people over the question of nonpublic funds. The Bar Associations are particularly aggrieved, apparently, with the suggestions we have made that no moneys and no time be spent, regardless of the source of those moneys, on any activities that the Congress prohibits Legal Services lawyers from being engaged in, whether that is rulemaking, lobbying, abortion, or whatever.

Mr. Stenholm and I feel very strongly that these activities are not something that Legal Services lawyers ought to be doing if they are prohibited by Congress from doing them. The argument that the bar association has is very simple. It goes something to the effect that if you are going to be restricting us in this regard, you are coming down and invading our province. We are contributing the money from IOLTA funds and, therefore, the Massachusetts or the Florida Bar ought to be able to give that money and Legal Services lawyers ought to be able to do whatever we want them to do with that money since it is not Federal money.

I don't buy that. I think if they are Legal Services lawyers, they ought to be doing nothing more than what we dictate that they do. If the local bar association wants them to do something else or wants attorneys to do something else, let them set up their own system, and if there is a question of efficiency involved in that, there is nothing in anything that we have proposed that would restrict the ability to cost-share, office-share, use the same receptionist, use the same library, as long as the attorneys who are going to do these other activities are being paid by the other activities totally and as long as the activity that they are involved with contributes its fair share of the rent and fair share of the cost of the receptionist, fair share of the cost of the library and so forth.

We think that that is the normal type of thing done in law practice today in office-sharing and would be an efficient method of conducting business to which no one would have an objection. But to allow Legal Services lawyers to engage in areas prohibited by Congress by using non-Federal funds to circumvent the process is an affront. When I go to a town meeting and have to answer for

the Legal Services Federal lawyers that I, you know, created up here, I cannot explain that adequately to my constituents and I don't think that they ought to have that type of confusion in the process. I believe it does not deter from good representation; in fact, it makes for better representation to have federally funded activities segregated from activities funded by nonpublic sources.

I am not going to go on any further, but I hadn't had a chance to speak with the chairman and the subcommittee about this proposal and therefore wanted to take advantage of this opportunity to do so. It is, again, not our suggestion that you adopt our proposal in its entirety. We know you are not going to do that, but hopefully we do provide to you a blueprint, something to work with. A lot of time has been spent on it and, as you go through your hearings and your markups on this, I would suggest that you might find some things about this that would be of benefit to you.

I would last like to urge that, having looked at the witness panel today that you had, that if at all possible before markup that you have an opportunity for another panel that includes a number of people who would be less sympathetic to Legal Services as they now exist and more sympathetic to reform. I know, for example, that the National Federation of Independent Business and the folks at the American Bankers Association, as well as the Farm Bureau, are particularly interested in testifying and I assume the public housing people who have complained numerous times to me over the last months would also like that opportunity.

I don't know what the plans of the committee are with regard to any future hearings. I personally don't want to see this issue belabored. I would like to see an early markup. I would like to see an expedited authorization process, but I would hope that those who are concerned about reform and strong business and local community advocates of reform might be given their day in court, so to speak, with a round of hearings in this Congress.

With that said, Mr. Chairman, I would be open to any questions if there are any.

Mr. FRANK. I just have a statement. I take very vigorous exception to your last remarks that suggests that somehow we excluded or picked and chose. We did no such thing. The hearings we had before this—in fact, more of the people were negative, I think, than positive.

As far as this is concerned, we did the appropriate things of telling people we were having a hearing. People on the majority side and minority side knew, and we, I believe, had a very vigorous selection process. We accept anybody who said they wanted to testify.

So your suggestion that somehow we are denying people their day in court is one that I——

Mr. MCCOLLUM. Mr. Chairman, I am not suggesting——

Mr. FRANK [continuing]. Have to—well, you did, and let me finish. You said you hoped they would be given their day in court. Anybody listening to that, I think, would infer that that meant they weren't given their day in court.

If anybody wanted to testify, they could have. No one was denied this. This subcommittee does not easily exercise subpoena power. I suppose we could have subpoenaed in some of those people, but if they wanted to testify, just being a public matter, in my experi-

ence, people let us know. We didn't ask anybody to testify. We simply threw it open.

One of the witnesses was added, in fact, last week because our colleague, Mr. Staggers, said here is what is going on with West Virginia and he brought this witness to our attention and we brought her in, so my practice is now and always been to announce that we are having a topic and anybody who wanted to testify could testify.

Mr. MCCOLLUM. Maybe I am mistaken. I just looked at the witness list and my impression is there weren't any on there and I thought perhaps you were going to have another day of hearings——

Mr. FRANK. Was it your impression that anybody asked to testify and was turned down?

Mr. MCCOLLUM. I wasn't aware that everybody was aware of the hearing. I don't assume, when I go on my committees, Mr. Chairman, with all due respect, that everybody who is interested is going to keep up to that degree when a new Congress is in session, that you are going——

Mr. FRANK. I believe that the Farm Bureau certainly knew and others knew——

Mr. MCCOLLUM. I am sure the Farm Bureau did——

Mr. FRANK [continuing]. About the hearing, and they——

Mr. MCCOLLUM. You know, if you didn't have them testify, it wouldn't bother me a bit. But I was just interested in pointing out that I didn't see on the witness list the NFIB, the American Bankers——

Mr. FRANK. That is because they didn't want to testify, apparently.

Mr. MCCOLLUM [continuing]. People that I know are concerned with the forum.

Mr. GEKAS. Mr. Chairman, point of parliamentary inquiry.

What I would like to know is whether we have a pattern or should have a pattern of inviting entities which we think would have an interest——

Mr. FRANK. When was the minority notified of this hearing? Eight or 9 days ago. We told——

Mr. GEKAS. In other words, we could have invited——

Mr. FRANK. That is always—any member of the committee, subcommittee, has always had the prerogative to make suggestions and we have often relied, in my years as subcommittee chairman, on the minority to make suggestions as well. We invited the administration and Mr. Martin. Any member who wanted to come. Mr. Staggers said last week, "Here's a witness," and we said fine.

[See app. 1.]

Mr. GEKAS. I think the real question is could we have anticipated a second hearing?

Mr. FRANK. I would also say last year, when we announced the hearing, people said they wanted to testify and we did the same thing this year we did last year, when the Farm Bureau came forward.

I really very much resent the suggestion that there was anything done to exclude anybody and the fact that the Farm Bureau testified last year and others knew about it and I also reject the notion

that people don't know. People who care about this follow this subject fairly closely and this hearing has been——

Mr. GEKAS. The real question I am asking now is within the time frame that the Chair might have had in mind, without doing harm to the entire process, would a second hearing be inappropriate?

Mr. FRANK. It would be an impingement on my scarce resource of time. We have——

Mr. GEKAS. What target did you have for a markup in this——

Mr. FRANK. Early April. My original target was the end of this month, but the staff advises me that we probably need some more time.

Mr. GEKAS. I would respectfully request the Chair to allow me to inquire from some of the entities to which the gentleman from Florida to see if they want——

Mr. FRANK. I must say to the gentleman he knew about this hearing some time ago——

Mr. GEKAS. But I anticipated more than one hearing, that is what I am saying to you.

Mr. FRANK. I don't know on what basis. If the gentleman wants to have this conversation in public, fine, but you could have asked me about it and I would have been glad to discuss this with you. I try very hard to discuss this with the minority and make our plans clear in every case and it has never been the practice before under my chairmanship to have extra hearings if we didn't have to.

Mr. GEKAS. Some of us may think that we have to. What I am saying to you——

Mr. FRANK. Then we can put it to a vote and we will decide. I reject that notion.

Mr. GEKAS [continuing]. Is we are trying to persuade the Chair——

Mr. FRANK. In other words, after Mr. McCollum comes here—I must say, the whole sequencing—you have known about this for some time.

Mr. GEKAS. Yes.

Mr. FRANK. Not previously have you suggested to me that we didn't have a full witness list or that there were other people who ought to be talked to. When someone comes to a hearing and suggests that people have been excluded when they haven't been, when they had the same opportunity——

Mr. GEKAS. No one said "excluded." I think you are taking——

Mr. FRANK [continuing]. Anybody else had to testify.

Mr. GEKAS [continuing]. Umbrage where no umbrage exists or should exist, but what I am saying to you, Barney, is this: I really felt I had no reason to feel that there would only be one hearing. Maybe it is my mistake, but I really felt—I had no reason to feel that there would only be one hearing. That is my point.

What I intend to do is I will try to see if anyone is interested in testifying. I will then either ask you to have a second hearing if we can fit it into the schedule, or at the very least, to allow their statements to be included——

Mr. FRANK. Statements are always included——

Mr. GEKAS. I understand——

Mr. FRANK. The record is always open and we would be glad to take statements, but I have to say to the gentleman, I don't know

what more I could do than to tell people we are having a hearing and to be available and to talk about this. This is the fifth term in which I have been a subcommittee chairman and in every previous term when I have been a subcommittee chairman, if the minority was interested in witnesses, they talked to me and we always had the witnesses.

I can't remember ever saying no to it, and that is in the Government Operations Committee and the Judiciary Committee——

Mr. GEKAS. The only difference is I chose this time to discuss it with you. That is the——

Mr. FRANK. Right, after the hearing and that is——

Mr. GEKAS. It is during a hearing. The point is——

Mr. FRANK. That is a very big difference because when we are planning and scheduling, days get laid out in advance. Hearings take up a very big chunk of my time and the staff's time and that is why there is a great deal of efficiency to doing them all at once.

Mr. GEKAS. I will make a college try at convincing you that perhaps we should have one other hearing before markup. If that fails, we will at least try to get the views of the entities which have not yet been heard, heard.

Mr. MCCOLLUM. Mr. Chairman, if I might say, while the discussion has all been over other witnesses, that certainly was not the focus or main concern of my appearance here today. Whether you have another hearing, another witness or another piece of paper in the record, my concern, and I hope it is not lost on anybody here today, is over the substance of what you are doing and going to do, and I am certainly at your beck and call and your staff's if there is any way that we are able to help and assist.

I have spent a lot of time on it and am very interested in it and interested in doing what is fair and right and not interested in being——

Mr. FRANK. I would say again to the gentleman from Florida, I would think he would know that if he had a witness that he wanted and he made a suggestion, we would act on it. The clear inference is that we weren't interested in doing that and I am disappointed in that. We would have been glad to, as I have always been, ready to accommodate witnesses that people have suggested.

Mr. MCCOLLUM. I guess I misunderstood, as did Mr. Gekas, the concern of the chairman about having only one hearing or the fact that there is only going to be this set today in making the suggestions that I made, and I again tell the Chair that I was not trying to imply or impugn his integrity on the issue. It was simply a question of my having reviewed the list and knowing that there are a number of other entities, I was rather surprised that they had not testified and I didn't know the process the chairman went through.

So, anyway, I don't want to belabor that point. My interest, again, is in the substance of the whole process and the suggestions that Mr. Stenholm and I have made and, hopefully we can be of some assistance to the subcommittee.

Mr. FRANK. Anything further?

The hearing is adjourned.

[Whereupon, at 12:20 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

APPENDIX 1.—LETTER TO HON. JACK BROOKS, CHAIRMAN, HOUSE JUDICIARY COMMITTEE, FROM HON. BARNEY FRANK, DATED APRIL 11, 1991

ONE HUNDRED SECOND CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

April 11, 1991

Honorable Jack Brooks
Chairman
Committee on the Judiciary
2138 Rayburn Office Building
Washington, D.C. 20515

Dear Jack:

During the Subcommittee on Administrative Law and Governmental Relations' March 13 hearing on the reauthorization of legal services, I stated that the Administration had been invited to present its views to the Subcommittee. That was an error. While in the past the Administration has been invited and has declined to testify on this issue, no formal invitation was extended this year by the Subcommittee.

I would appreciate it if you would see that this letter is included in the formal record of the hearing.

Sincerely,

BARNEY FRANK, Chairman
Subcommittee on Administrative
Law and Governmental Relations

BF:pjd

APPENDIX 2.—LETTER TO HON. BARNEY FRANK, FROM HON. LEWIS F. PAYNE, JR., DATED APRIL 23, 1991, WITH RESPONSE FROM MR. FRANK

LEWIS F. PAYNE, JR.
5TH DISTRICT, VIRGINIA

1118 LONGWORTH BUILDING
WASHINGTON, DC 20515
(202) 225-4711

ADMINISTRATIVE ASSISTANT
JIM JOHNSON

TOLL-FREE 1-800-535-4008

Congress of the United States
House of Representatives
Washington, DC 20515

April 23, 1991

PUBLIC WORKS AND TRANSPORTATION COMMITTEE

SUBCOMMITTEES
SURFACE TRANSPORTATION
AVIATION
ECONOMIC DEVELOPMENT

VETERANS' AFFAIRS COMMITTEE

SUBCOMMITTEES
HOSPITALS AND HEALTH CARE
HOUSING AND MEMORIAL AFFAIRS

Honorable Barney Frank
1030 Longworth Offica Building
Waehington, DC 20515

Dear Barney:

As we hava previously diecussed, I wanted to state for the Committae soma of tha concerns of Agricultural producers in my district. Thase concerns are relevant to the reauthorization of Legal Sarvices Corporation activities.

My dietrict ie a large agriculturally based araa covering Southside Virginia. When I am in the Dietrict, I frequently racaive complainta from producar conatituante about "Legal Aid". Thare ie a common thraad to all the complainta, which I will detail firet; and than I will diecusa a typical example of a specific complaint.

The common element to all of the complainta ia that these taxpayers' own funda are being used to bring claims against them which as a practical matter they have no ability to defend. To undarstand thia viewpoint, ona must understand that tha producere in my district are small-ecala farmera employing annually about four or five foreign seasonal workers each. The operations are thue small, family buainasses with tight operating margins.

Under thasa conditiona it ia not difficult to understand the reaction of a producer who receivas a demand letter or is served with a euit brought by a legal servicee attorney out of Texaa, Florida or Atlanta. Tha reaction ia anger, rasantmant and fear - fear that a whole aeason'a margin will be wiped out if the $20 or $30 thouaand damand is valid. And there is no one to eit down with to explain the baeia of a claim brought from hundrade of miles away; nor is thera someona to sit down with to tell the producer's side of the story. We all know there are always two aidaa to every diaputa.

The usual result, than, is that the producer pays savaral thouaand dollara to eettla tha claim without evar fealing that it was fairly adjudicated.

DISTRICT OFFICES:

☐ FRANCES H. PRICE, MANAGER
DAN DANIEL POST OFFICE BUILDING
SUITE 301
DANVILLE, VA 24541
TELEPHONE: (804) 793-1320

☐ MARGARET WATKINS, MANAGER
ABBITT FEDERAL BUILDING
103 SOUTH MAIN STREET
FARMVILLE, VA 23901
TELEPHONE: (804) 392-8331

☐ GREG KELLY, MANAGER
P.O. BOX 256
HIGHWAY 664-W
HILLSVILLE, VA 24343
TELEPHONE: (703) 728-3197

The specific case of one of my constituents, whose reputation in the community for truth I can vouch, illustrates the common problem. This constituent employed six foreign (Mexican) seasonal workers. He had used foreign workers in prior years and has used them since, with no problems.

During the season in question, however, he had two workers whose work was so below satisfactory that he dismissed them. He received two other workers who did fine work, and again he has a stable history of good worker relations and results.

A number of months following this he received a demand letter and then a suit for over $20 thousand in back wages and travel expenses. The letter came from a legal services attorney in Texas and the suit was filed in federal district court in Texas. He hired an attorney who advised him that the venue could not be changed to Virginia and that he would have to appear in Texas. In short, it would cost far more to defend the suit than to settle it. He paid a settlement of about $3000 in addition to his attorney's fees; all the while feeling that the claim had no merit.

As we have discussed, I feel the Committee needs to seriously address the complaints of these small producers attempting to comply with the law and yet finding themselves on the receiving end of long-distance litigation they cannot reasonably defend - litigation brought with their own tax money.

I welcome and appreciate your statement that you and the Committee staff will work with me in addressing these concerns in the reauthorization process.

Sincerely,

Lewis F. Payne, Jr.

LFPJr:jmj

ONE HUNDRED SECOND CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

April 26, 1991

Honorable Lewis F. Payne, Jr.
1118 Longworth House Office Building
Washington, D.C. 20515

Dear ~~Lewis~~ L. F.

Thank you for your letter of April 23, 1991, recounting the problems that farmers in your district have in defending suits filed against them by legal aid lawyers in the courts of other states. Your letter will be included in the formal record of the Subcommittee's March 13, 1991 hearing on reauthorization of the Legal Services Corporation.

A bill reauthorizing the Legal Services Corporation (H.R.2039) was reported by the Subcommittee last Thursday. The bill has several provisions that would make it less likely that farmers are pressured to settle meritless litigation and are better able to defend themselvee when suits are brought in other states.

Section 8 of the bill requires legal services programe to adopt policies that require program employeee to negotiate settlements to disputes and to use alternative dispute resolution programs, where available and appropriate, before bringing suit. This eection is designed to encourage meaningful diecueeion of the merits of a case and use of less expensive case resolution devices before a suit can be brought. In such cases, the appearance of a farmer in the jurisdiction where the plaintiff is located may not be necessary.

Section 13 prohibits eolicitation of a potential client to initiate litigation without a property factual basis for the complaint.

Section 15 requires that the facts on which a claim is initially based be recounted in a written retainer agreement kept on file for review by the Corporation or its representatives when a program ie monitored.

Finally, Section 21 creates a right for farmers to recover reasonable costs and attorneys fees when they are the victims of harassment, retaliation, or the malicious use of legal process, or a court finds that a plaintiff's action was frivolous, unreasonable, or without foundation. The possibility of such awards will make it less likely that meritless cases are brought and more likely that farmers will have the ability to defend, rather than settle such actions regardless of where the suits are originally filed.

I appreciated hearing your views.

Sincerely,

BARNEY FRANK
Chairman, Subcommittee on
Administrative Law and
Governmental Relations

BF/pjd

APPENDIX 3.—LETTER TO HON. BARNEY FRANK, FROM JOHN C. DATT, EXECUTIVE DIRECTOR, AMERICAN FARM BUREAU FEDERATION, DATED APRIL 5, 1991, WITH RESPONSE FROM MR. FRANK

AMERICAN FARM BUREAU FEDERATION

225 TOUHY AVENUE • PARK RIDGE • ILLINOIS • 60068 • (312) 399-5700 • FAX (312) 399-5896
600 MARYLAND AVENUE S.W. • SUITE 800 • WASHINGTON, D.C. • 20024 • (202) 484-3600 • FAX (202) 484-3604

April 5, 1991

The Honorable Barney Frank
Chairman
Subcommittee on Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The American Farm Bureau Federation, the largest farm organization in the United States representing almost 4 million family members, strongly supports the provisions and intent of H.R. 1345, the Legal Services Reform Act of 1991. As you know, major reform of the Legal Services Corporation has long been a goal of Farm Bureau.

Regrettably, Farm Bureau was not asked to participate at the Administrative Law Subcommittee's hearing on March 13, 1991, which explored issues associated with reauthorizing the Legal Services Corporation, including H.R. 1345.

Farm Bureau previously testified at Subcommittee hearings in 1989 and 1990 on this issue. Accordingly, some Subcommittee members are familiar with farmers' Legal Services problems. However, half of the Members on the Subcommittee are new this year, including the Ranking Minority Member, Rep. George Gekas, and we urge that an additional day of hearings be scheduled so that additional views can be heard. Support for reform in the agricultural community has never been stronger, and it is important new Subcommittee members be permitted to hear our views.

As in past years, Farm Bureau supports the concept of a federally-funded Legal Services Corporation, but believes strongly that activities undertaken by certain grantees and staff attorneys are unethical and inappropriate and should be sanctioned and eliminated. Farm Bureau's 1991 policy on legal services is attached.

Nevertheless, Farm Bureau would like to comment briefly on those sections in the 1991 McCollum-Stenholm proposal in which farmers have particular interest, and we ask that these comments be included in the Subcommittee's hearing record.

Section 3. Theft and Fraud. We support this section and commend your strong position supporting the language. Providing the Legal Services Corporation with the authority to sanction grantees found guilty of fraud, theft and other wrongdoing is an important improvement in the LSC Act.

Section 4. Solicitation. As Farm Bureau has testified previously, inappropriate client solicitation is a frequent abuse observed by farmers. This section prohibits such solicitation by holding LSC-funded attorneys to the same ethical standard as that required of non-LSC attorneys by the ABA Model Code of Professional Responsibility. Farm Bureau does not oppose "client outreach" when it is informational in nature, but in many cases, LSC staff attorneys use these visits to inappropriately recruit clients for lawsuits and other actions against the employer.

Section 5. While this section has been significantly changed from the 1990 bill, Farm Bureau supports the requirement that LSC staff attorneys be required to identify all plaintiffs and the facts in the case prior to filing a lawsuit against the employer. Farm Bureau believes that John Doe and notice pleadings, in cases which may lack valid plaintiffs, have provided a tool for "fishing expeditions" by LSC-funded attorneys bent on assembling large numbers of plaintiffs through early review of wage and hour records and other discoverable documents.

Section 6. Lobbying. We strongly support language which closes the loophole in the present LSC statute that allows LSC-funded staff to lobby legislatures and challenge agency rulemaking on behalf of eligible clients. It is entirely inappropriate for taxpayer money to be used, with limited Congressional or administrative oversight, to promote agendas not endorsed or enacted by Congress.

Section 7. Timekeeping. Farm Bureau believes that increased accountability for LSC-funded staff attorneys and programs may be the most important objective of the reform effort. Requiring LSC programs and attorneys to account for their time and expenditures is key to accountability. Presently, LSC attorneys are the only attorneys whose time is unaccountable to either client or employer. Further, most LSC attorneys admit that they already keep time sheets, for purposes of recovering fees in successful litigation. This information would provide an important tool for Congress, the LSC Board and grantees themselves to measure employee/program performance and client needs.

Section 8. Authority of Local Government Boards. Farm Bureau believes that permitting local boards the widest possible latitude to set case priorities is important to accurately reflect real community client needs, as opposed to the staff attorneys' perceptions of needs. We believe that this will assist in reducing "impact" litigation and enhance the delivery of day-to-day legal services to the poor.

Section 9. Regulation of Nonpublic Resources. Requiring that all funds used by programs be subject to the same legal restrictions is vitally important for increased accountability and uniform performance. Placing restrictions on federal funds but permitting free license to engage in activities otherwise prohibited under the Act with private funds would render the Act meaningless. However, Farm

Bureau recognizes that new programs which do not receive any federal monies may be established to engage in activities outside the LSC Act, such as lobbying, prohibited class action litigation, union organizing and other activities. Clearly, we have no objection to the creation of such organizations so long as they are truly and completely separate from taxpayer-funded grantee structures.

Section 11. Implementation of Competition. Competitive bidding is also a key component in increasing accountability of grantees. This would assure annual review of a program's competence and effectiveness. Presently, presumptive refunding adversely affects productivity and accountability. Further, competitive bidding would enhance innovative and creative delivery of legal services.

Section 12. Attorney's fees. Under today's legal services structures, farmers sued by LSC-funded attorneys pay as many as four times: first, through their taxes; second, to their defense attorneys and, when the case is settled or the plaintiff prevails; third, damages/settlement costs; and, fourth, attorneys' fees to the LSC grantee. This is grossly unfair. Further, we believe that recovery of attorneys' fees by private parties which prevail should be automatic. This would act as a brake on harassing and frivolous litigation and force LSC staff attorneys to assess each case carefully on its merits rather than on its impact value.

Section 13. Class actions. We believe that prohibiting class action suits is an important reform. Presently, Farm Bureau and the agricultural community spend excessive amounts of resources contesting class action suits brought by LSC grantees. Such actions are more aimed at changing laws and regulations, rather than on solving the day-to-day legal problems of the poor.

We suggest that current appropriations riders incorporated in H.R. 1345 should be continued.

Thank you for the opportunity to incorporate these views in the record on reauthorization of the present Legal Services Corporation.

Sincerely,

John C. Datt
Executive Director
Washington Office

Attachment

cc: The Honorable George Gekas
Members of the Subcommittee

ATTACHMENT A

Legal Services Corporation 167

We call for major reform of the Legal Services Act of 1974. We support making Legal Services Corporation and its grantees accountable to the executive branch. We are not opposed to a reasonable program to provide legal assistance for persons with incomes at or below the poverty level.

To achieve major reform of the program, we will work with other groups, both inside and outside agriculture, to mount a multiyear legislative effort for that purpose.

We will:

(1) Continue to support efforts to defund the special programs that have been mandatorily funded by Congress and transfer those funds to direct delivery of services to poor people;

(2) Support efforts to bring about other reforms on an interim basis, including but not limited to:

(a) an amendment to the Legal Services Act to permit individual citizens or groups to file suit against the Legal Services Corporation and its funding recipients and to seek damages where Legal Services lawyers or Legal Services groups have operated in violation of the law;

(b) an amendment to require Legal Services groups and their staff attorneys to make a good faith effort to get the employer and the complaining employee or employees in a face-to-face meeting for the purpose ofresolving problems before a lawsuit is threatened or filed: and

(c) an amendment to either prohibit Legal Services attorneys and groups from filing for or receiving court and legal costs from defendants, or to permit successful defendants to file for and receive court and legal costs from the Legal Services group that employs the attorney bringing suit;

(3) Develop organized ways of settling problems between agricultural employers and their employees to avoid costly lawsuits;

(4) Continue to develop and promote a training program among agricultural employers to:

(a) make them more aware of the labor laws and regulations affecting agricultural employment; and

(b) assist them in developing an effective labor/management relations program on their farms and ranches;

(5) Assist farmers in becoming better informed about the Legal Services program and to become more involved in the operation of local Legal Services groups; and

(6) Study the development of the interest on Lawyers Trust Accounts, which has become a major source of funding for Legal Services groups, including the possibility of developing or supporting legislation at the state level to bring better public control over this program.

ONE HUNDRED SECOND CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

April 12, 1991

Mr. John C. Datt
Executive Director
Weshington Office
Americen Farm Bureau Federation
600 Maryland Avenue, S.W.--Suite 800
Waehington, D.C. 20024

Dear Mr. Datt:

Thenk you for your lettar of April 5, 1991, eetting out the viewe of your organizetion with regerd to raauthorizetion of the Legel Services Corporetion. It will be included in the record of the Subcommittea's Merch 13 heering on thet issua.

Due to tha time conetreinte thet the Subcommittea ia under for reporting e bill, I regret that the Subcommittee cennot echedule an additionel hearing et this time.

I went to make cleer, however, thet the Ferm Bureau would heve been placed on the March 13 hearing echedula if it hed aaked to appear before the Subcommittee, or hed another Member eeked me on its behalf. In eny case, having testified before tha Subcommittaa in both 1989 end 1990, tha Ferm Bureau's views on the legal servicee program are aveileble to the Members of the Subcommittee.

Sincerely,

BARNEY FRANK, Chairman
Subcommittee on Administretive
Law and Governmental Relations

BF:pjd

APPENDIX 4.—STATEMENT OF JOHN POMERANZ, ON BEHALF OF HALT—AN ORGANIZATION OF AMERICANS FOR LEGAL REFORM

HALT *An Organization Of*
AMERICANS FOR LEGAL REFORM

Statement of
John Pomeranz
on behalf of
HALT — An Organization of Americans for Legal Reform

to the
Subcommittee on Administrative Law and Government Relations
of the
Committee on the Judiciary
of the
U.S. House of Representatives

In support of
Reauthorization of the Legal Services Corporation

March 25, 1991

This Subcommittee has heard from a variety of interested parties at its hearings during this Congress and the previous Congress. The American Bar Association, representatives of legal service employees and programs, and others have spoken in favor of increasing the LSC's meager resources and eliminating restrictions that unfairly limit the legal services available to the poor. These groups have pointed to the huge unmet legal needs of poor people in America.

Others have come before you touting so-called "reforms" that tie the hands of legal service programs at the expense of the clients they serve. These individuals and groups, like the other side of the debate, speak of the needs of the poor and their commitment to meeting those needs.

As the only national organization representing consumers of legal services, HALT — An Organization of Americans for Legal Reform has worked through education and advocacy to enable people to handle their legal affairs simply, affordably and equitably. Founded in 1978, HALT represents 150,000 members

1319 F STREET NW ■ SUITE 300 ■ WASHINGTON, D.C. 20004 ■ (202) 347-9600

nationwide. HALT is taking this opportunity to present the Subcommittee with *consumers'* viewpoint of the Legal Services Corporation.

Increasing Access to Justice

All sides agree that there is huge unmet need for legal services. Everyday in this country, several million Americans face evictions, cut-offs in government benefits, child support collection problems, consumer disputes, and other everyday legal problems without help because they simply can't afford a lawyer.

A nationwide study commissioned by the American Bar Association (ABA) found that, in 1987, 40% of Americans at or below 125% of the poverty line experienced civil legal problems for which they had no legal assistance.[1] This means that low-income households experienced approximately 19 million civil legal problems that year for which they had no help — outnumbering those who did get legal help 8 to 2.[2] This alarming statistic echoes the findings of similar studies across the country — in Illinois, New York, Maryland, North Dakota, Florida, and Texas — showing that roughly 80% of low-income people's civil legal needs are not being met with legal help.[3]

HALT supports a variety of options to provide increased legal services to the poor, and is gratified that Legal Services Corporation grantees have often been leaders in seeking innovative ways to stretch existing resources farther.

HALT supports increased use of alternatives such as arbitration and mediation which can limit the necessity for expensive and time-consuming

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[1] The Spangenberg Group, *American Bar Association National Civil Legal Needs Survey*, at ii (May, 1989).
[2] *Id.*
[3] *See, e.g.*, The Spangenberg Group, *Illinois Legal Needs Study*, at 133 (July, 1989).

litigation. Legal service lawyers were among the first to use these alternative dispute resolution mechanisms extensively.

HALT supports the use of paralegals to handle routine cases independent of attorneys, freeing lawyers to handle complicated or unusual cases where their broader range of education and skills are necessary. LSC programs led the way, first in their use of paralegal support staff and, more recently, in their increasing use of nonlawyers to handle administrative disputes directly for clients.[4]

HALT encourages and helps train consumers to handle their legal problems themselves when possible. Legal service offices are now offering pro se assistance to many clients, expanding the number of legal problems they can help solve.

HALT applauds the work done by volunteer attorneys who donate their services to the poor. Many LSC programs are now actively involved in the encouragement and support of pro bono services.

HALT recognizes the increased resources made available through non-federal funds from IOLTA programs, private contributions, and other sources and opposes restrictions on the use of those funds that might deter contributors. Legal service programs provide an efficient way to use those funds to meet legal needs in their communities without wasteful duplication of effort.

HALT also supports other efforts to either increase the amount of legal help available to the poor or decrease the demand for those services — alternative compensation systems, de-lawyering certain procedures, increasing the types of cases heard in small claims courts and more.

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[4] Recently, the Legal Services Corporation of Iowa came under fire for its use of nonlawyers to help clients in administrative hearings. HALT is concerned that existing unauthorized practice of law statutes are preventing nonlawyers from providing quality, affordable legal services to both the poor and the middle class. HALT urges the legal services community to support efforts to reform these laws.

Yet more resources are still necessary. LSC-funded programs and other sources of legal services still leave 80 percent of the legal needs of the poor unaddressed, and new methods for providing legal services, no matter how innovative, can only stretch dollars so far. As a result, HALT supports additional funding for the Legal Services Corporation, beginning with the $475 million FY 1992 budget recommended by the National Legal Aid and Defender Association.

Setting Priorities

In this time of tight federal budgets, even the most optimistic supporters of LSC cannot expect enough funding to fully meet the legal needs of the poor. As a result, the focus of the debate in this Subcommittee has been on setting priorities and, perhaps more important in the long run, deciding *who* sets those priorities.

Many have proposed setting those priorities in this reauthorization legislation or through policies from the LSC Board — placing limits and restrictions on when and how federal funds (and even private funds) for legal services can be used. From HALT's standpoint, that is inappropriate.

First, placing limits on the legal services provided by LSC grantees decreases the poor's access to legal services. Options that are open to middle and upper-class citizens are closed to low-income people.

Second, national legislation or Board action is difficult for consumers to influence. Powerful groups wishing to protect their own interests, on the other hand, have a greater ability than consumers to participate in and shape these debates. As a result, priority-setting at the national level is more likely to result in provisions that only benefit special interests to the detriment of the poor.

HALT urges the Subcommittee to place no restrictions on the use of LSC funds beyond the need requirement. The Subcommittee should leave the bulk of the decision-making authority where consumers can have the most input and control — in the local boards that oversee legal service programs, where at least one third of the members are client representatives.

In fact, HALT urges the Subcommittee to expand consumers' role on those boards. HALT proposes that client membership on these boards be increased to at least 50 percent. That way, consumers can make the priority-setting decisions that best respond to needs in their communities.

If local clients do not want legal service program help opposing a redistricting plan under the Voting Rights Act, they can say so.

If local clients don't think federal money should be used to bring suits on behalf of those seeking abortions, they can prevent it.

If local clients oppose legal service program representation of accused drug dealers and their families during eviction proceedings, they can "just say 'no.'"

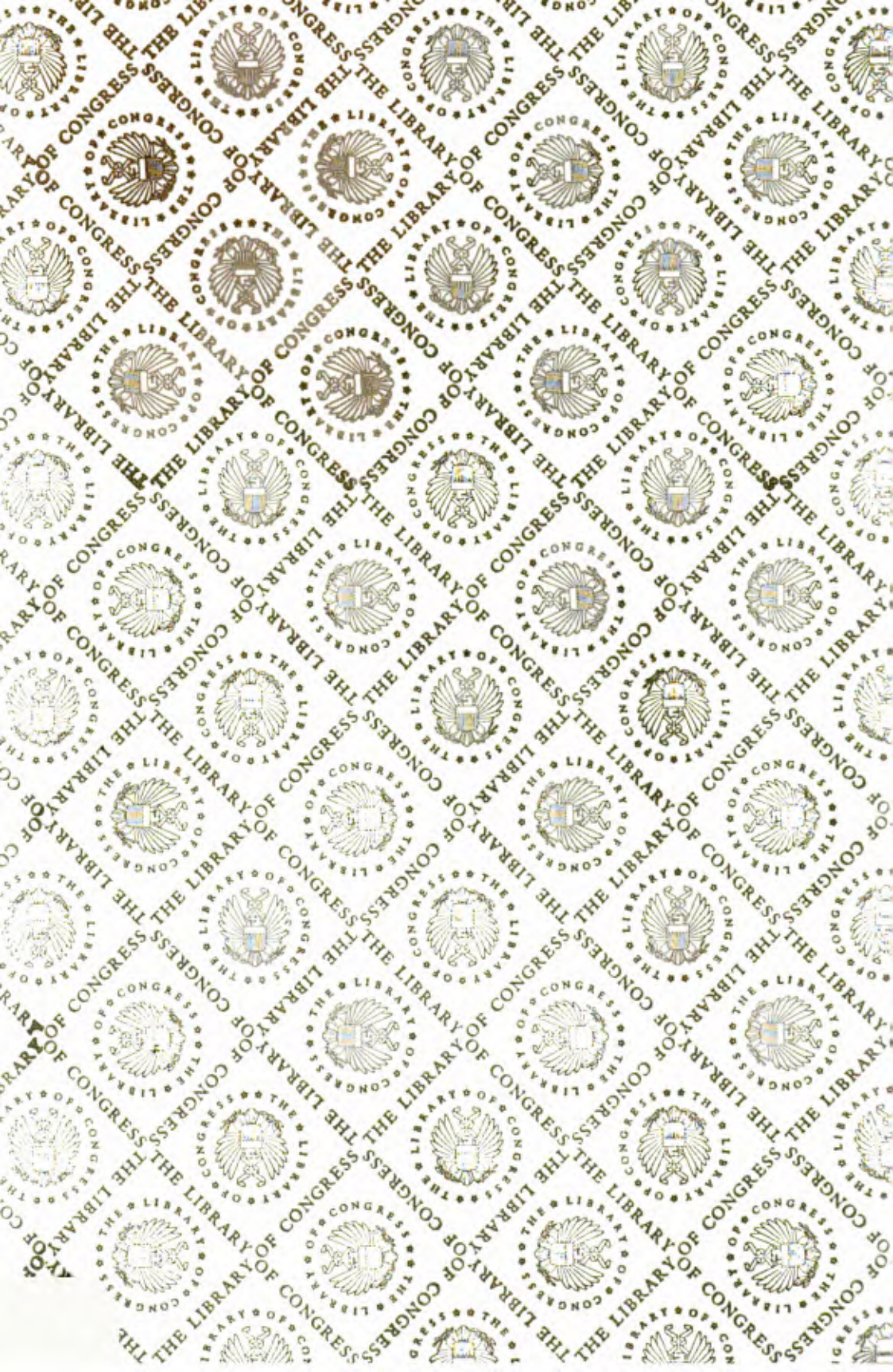
If local clients think legal service attorneys' work on behalf of migrant farm workers is too aggressive, their local boards can put limits on how the lawyers handle that type of case.

If local clients think the one-on-one needs of individuals are more important than class-action suits that could bring broader but less immediate benefits, they can prohibit the program from taking these cases.

By giving low-income consumers control over legal service programs, you help fulfill the Legal Service Corporation's promise of putting the poor on an equal footing with their fellow citizens in the courts.

Conclusion

HALT urges a speedy reauthorization of the Legal Services Corporation with increased funding. HALT urges you to reject statutory or LSC Board-imposed limits on the services LSC grantees can provide. HALT urges you to give clients control of local LSC boards to permit them to decide for themselves what priorities for the programs truly fit their needs. On behalf of the consumers of legal services, HALT asks you to act now to ensure greater access to justice for the poor of this country.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